

United States Court of Appeals
For the District of Columbia Circuit

Division for the Purpose of
Appointing Independent Counsels
Division No. 94–1

Final Report of the Independent Counsel

In Re: Madison Guaranty Savings & Loan Association

Volume I: Overview

Robert W. Ray
Independent Counsel

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United States Court of Appeals
For the District of Columbia Circuit
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Special Division

United States Court of Appeals

District of Columbia Circuit

Division for the Purpose of
Appointing Independent Counsels
Ethics in Government Act of 1978, As Amended

Division No. 94-1

IN RE: MADISON GUARANTY SAVINGS & LOAN
(IN RE: MADISON GUARANTY SAVINGS & LOAN ASSOCIATION)

Before: SENTELLE, *Presiding*, FAY and CUDAHY, *Senior Circuit Judges*

ORDER

Upon consideration of the motion of Independent Counsel Robert W. Ray requesting authorization to release and publish his Final Report in this matter, it is hereby

ORDERED that the motion be granted. It is therefore

ORDERED, ADJUDGED, AND DECREED that the Final Report of Independent Counsel Robert W. Ray in *In Re: Madison Guaranty Savings & Loan Association*, inclusive of an appendix containing all comments or factual information submitted by any individual pursuant to 28 U.S.C. § 594(h)(2), shall be released to the public.

Per Curiam
For the Court:
Mark J. Langer, Clerk

by Marilyn R. Sargent
Chief Deputy Clerk

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United States Court of Appeals
For the District of Columbia Circuit

FILED AUG 05 1994

RON GARVIN
CLERK

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Division for the Purpose of
Appointing Independent Counsels

Ethics in Government Act of 1978, As Amended

In re: Madison Guaranty
Savings & Loan Association

Division No. 94-1

Order Appointing
Independent Counsel

Before: SENTELLE, *Presiding*, and BUTZNER and SNEED, *Senior Circuit Judges*.

Upon consideration of the application of the Attorney General pursuant to 28 U.S.C. § 592(c)(1)(A) for the appointment of an independent counsel with authority to exercise all the power, authority and obligations set forth in 28 U.S.C. § 594, to investigate whether any individuals or entities have committed a violation of federal criminal law, other than a Class B or C misdemeanor or infraction, relating in any way to James B. McDougal's, President William Jefferson Clinton's, or Mrs. Hillary Rodham Clinton's relationships with Madison Guaranty Savings and Loan Association, Whitewater Development Corporation, or Capital Management Services, Inc.; it is

ORDERED by the Court in accordance with the authority vested in it by 28 U.S.C. § 593(b) that Kenneth W. Starr, Esquire, of the District of Columbia bar, with offices at Kirkland and Ellis, 655-15th Street, NW, Washington, DC, 20005, be and he is hereby appointed Independent Counsel with full power, independent authority, and jurisdiction to investigate to the

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maximum extent authorized by the Independent Counsel Reauthorization Act of 1994 whether any individuals or entities have committed a violation of any federal criminal law, other than a Class B or C misdemeanor or infraction, relating in any way to James B. McDougal's, President William Jefferson Clinton's, or Mrs. Hillary Rodham Clinton's relationships with Madison Guaranty Savings & Loan Association, Whitewater Development Corporation, or Capital Management Services, Inc.

The Independent Counsel shall have jurisdiction and authority to investigate other allegations or evidence of violation of any federal criminal law, other than a Class B or C misdemeanor or infraction, by any person or entity developed during the Independent Counsel's investigation referred to above and connected with or arising out of that investigation.

The Independent Counsel shall have jurisdiction and authority to investigate any violation of 28 U.S.C. § 1826, or any obstruction of the due administration of justice, or any material false testimony or statement in violation of federal criminal law, in connection with any investigation of the matters described above.

The Independent Counsel shall have jurisdiction and authority to seek indictments and to prosecute any persons or entities involved in any of the matters described above, who are reasonably believed to have committed a violation of any federal criminal law arising out of such matters, including persons or entities who have engaged in an unlawful conspiracy or who have aided or abetted any

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federal offense.

The Independent Counsel shall have all the powers and authority provided by the Independent Counsel Reauthorization Act of 1994. It is

FURTHER ORDERED by the Court that the Independent Counsel, as authorized by 28 U.S.C. § 594, shall have prosecutorial jurisdiction to fully investigate and prosecute the subject matter with respect to which the Attorney General requested the appointment of independent counsel, as hereinbefore set forth, and all matters and individuals whose acts may be related to that subject matter, inclusive of authority to investigate and prosecute federal crimes (other than those classified as Class B or C misdemeanors or infractions) that may arise out of the above described matter, including perjury, obstruction of justice, destruction of evidence, and intimidation of witnesses. The Court, having reviewed the motion of the Attorney General that Robert B. Fiske, Jr., be appointed as Independent Counsel, has determined that this would not be consistent with the purposes of the Act. This reflects no conclusion on the part of the Court that Fiske lacks either the actual independence or any other attribute necessary to the conclusion of the investigation. Rather, the Court reaches this conclusion because the Act contemplates an apparent as well as an actual independence on the part of the Counsel. As the Senate Report accompanying the 1982 enactments reflected, "[t]he intent of the special prosecutor provisions is not to impugn the integrity of the Attorney General or the

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Department of Justice. Throughout our system of justice, safeguards exist against actual or *perceived* conflicts of interest without reflecting adversely on the parties who are subject to conflicts." S. Rep. No. 496, 97th Cong., 2d Sess. at 6 (1982) (emphasis added). Just so here. It is not our intent to impugn the integrity of the Attorney General's appointee, but rather to reflect the intent of the Act that the actor be protected against perceptions of conflict. As Fiske was appointed by the incumbent administration, the Court therefore deems it in the best interest of the appearance of independence contemplated by the Act that a person not affiliated with the incumbent administration be appointed.

It further appearing to the Court in light of the Attorney General's motion heretofore made for the authorization of the disclosure of her application for this appointment pursuant to 28 U.S.C. § 592(e) and of the ongoing public proceedings and interest in this matter, that it is in the best interests of justice for the identity and prosecutorial jurisdiction of the Independent Counsel to be disclosed,

IT IS SO ORDERED.

Per Curiam
For the Court:

Ron Garvin, Clerk

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PREFACE

"I believe we . . . endured what history will clearly record was a bogus investigation where there was nothing to Whitewater, nothing to those other charges. . . ."

-- President Clinton
January 26, 2000, Jim Lehrer Newshour

* * * * *

"[L]et me remind you . . . the Whitewater thing was bogus from day one; it had nothing to do with the official conduct of the administration anyway.

I keep waiting for somebody to say . . . that a whole bunch of this stuff was just garbage and that we had totally innocent people prosecuted because they wouldn't lie."

-- President Clinton
June 28, 2000, White House Press Conference

* * * * *

"All I know is Whitewater was a fraud. . . . The biggest bogus issue in modern American politics . . . put . . . in there [by] . . . that faction of the Republican party [that] control[s] those independent counsels."

-- President Clinton
December 19, 2000, CBS 60 Minutes II Interview

* * * * *

President Clinton's sustained attack, during the last year of his Administration, on independent counsel investigations as "bogus" ignores the seriousness of the matters this Office has prosecuted, matters where juries have rendered guilty verdicts, and where judges have accepted numerous guilty pleas to serious federal crimes. This investigation was conducted pursuant to a statute the President supported as "a force for Government integrity and public

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confidence" and then signed into law. It began only after Attorney General Janet Reno determined that the evidence warranted further investigation. But more importantly, the Madison Guaranty/Whitewater investigation was not "just garbage" and did not result in "innocent people [being] prosecuted because they wouldn't lie," as the President has further said.

Even before the reauthorization of the now lapsed independent counsel law, the Department of Justice was investigating matters commonly referred to as Whitewater. The Department of Justice's investigation obtained three guilty pleas under regulatory special counsel Robert B. Fiske Jr. before the August 1994 appointment of a statutory independent counsel. Our office, building on the Department of Justice's investigation, obtained guilty verdicts against then Governor Jim Guy Tucker of Arkansas and James B. McDougal and his wife Susan McDougal, as well as thirteen guilty pleas. Those guilty pleas included two separate felony pleas from former Associate Attorney General Webster L. Hubbell. In short, juries and courts did not consider these to be "bogus" prosecutions.

Although no one would dispute the President's right to defend his Administration, characterizing independent counsel investigations as "bogus" and "just garbage" simply is unwarranted. An independent counsel investigation and the prosecutions that result from that investigation are a legitimate product of the American legal system. By calling a duly authorized law enforcement investigation "bogus," the President impugns and undermines not just this Office, but also courts, judges and juries who together have validated this investigation and the prosecutions brought.

This four-volume Final Report represents the culmination of the Madison Guaranty/Whitewater investigation. That investigation began in September 1992, when criminal investigators from the Resolution Trust Corporation (RTC) forwarded to the United States

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Attorney for the Eastern District of Arkansas and the Federal Bureau of Investigation a referral alleging that Jim and Susan McDougal had committed violations of federal criminal law in their operation of the Madison Guaranty Savings & Loan Association, including allegations relating to the operation of Whitewater Development Corporation -- a real estate venture jointly owned by the McDougals and the Clintons.

For approximately a year and a half, the FBI -- first in coordination with the United States Attorney's Office, then with the assistance of a career prosecutor from the Department of Justice and, finally, under the direction of regulatory counsel Fiske -- received nine additional referrals from the RTC naming the McDougals and Governor Tucker and one involving President and Mrs. Clinton. The Small Business Administration forwarded its own separate criminal referral documenting allegations against Little Rock Municipal Court Judge David Hale and Mr. and Mrs. McDougal. In addition, Mrs. Clinton's former colleagues at the Rose Law Firm told investigators that her former law partner, Webb Hubbell, had committed billing fraud, bilking Rose clients out of more than $300,000.

After an investigation by the FBI and U.S. Attorney's Office, Hale was indicted. He subsequently pleaded guilty and provided evidence to Mr. Fiske which disclosed criminal activity by Governor Tucker and alleged criminal conduct by President Clinton. By early August 1994, Mr. Fiske's investigation stood poised to charge Hubbell for billing fraud and Governor Tucker for conspiracy and tax fraud.

Following the appointment of my predecessor, Independent Counsel Kenneth W. Starr, this Office exhaustively examined the original allegations of criminal conduct and many other subsequent allegations and referrals expressly within our jurisdiction. The criminal conduct uncovered by this Office (conduct which, ultimately, cost the American taxpayers in excess of

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$70 million when Madison Guaranty failed) was serious, substantial and, in the end, the legitimate subject of prosecution under the American legal system.

To many, this eight-year investigation has gone on too long. To others, the investigation was unnecessary because it did not result in criminal charges against either President or Mrs. Clinton and was largely a wasteful partisan extravagance. To still others, the investigation was not as fair as it was lengthy. While understandable, these sentiments are, I believe, largely misplaced and reveal a fundamental misunderstanding of the nature of the legal process and the role of the prosecutor. A determination to prosecute represents a professional judgment that the fundamental interests of society require the application of the criminal laws to a particular set of circumstances -- recognizing both that serious violations of federal law ought to be prosecuted and that prosecution entails profound consequences for the accused and, in this instance, for the Nation. No one charged with such a responsibility can fail to appreciate the magnitude of the task assigned. Yet the very nature of the task counsels in favor of a judicious approach in light of the far-reaching consequences involved.

The fact that, after fully reviewing the evidence, this Office determined not to present criminal charges in this matter against either President or Mrs. Clinton should be a source of comfort, not condemnation. It reflects the considered judgment of a dedicated group of professionals after a thorough investigation that prosecution was not warranted here. Indeed, the principal value of the independent counsel law was to ensure public acceptance of a decision not to prosecute.

This does not mean that the impetus for the investigation was "bogus" or that the allegations were a "fraud." Quite to the contrary, as the ample record reflected in this Final Report demonstrates, the allegations were credible, substantial and required a thorough

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investigation to resolve them.

The public relations attack on the law enforcement and judicial processes engendered by this investigation was unfortunate and damaged the country's confidence that a duly constituted investigation could get it right. I hope that fair-minded readers will reflect on the facts detailed in this Final Report and come to accept the fairness of the investigation and the value of the process. That process is resilient and offers great hope, as it has throughout our country's history.

* * * * *

The work of this Office could not have been achieved without the contributions of a number of talented individuals. These past and present colleagues indeed worked long and hard under very difficult circumstances. I am most proud, however, of the decisions made that perhaps may not be long remembered or even acknowledged -- the small choices made on a daily basis, the professional demeanor and conduct of the investigation, and, ultimately, the determination to decline prosecution of matters where indictment was not warranted.

Hundreds of attorneys, agents, administrative and support staff have participated in the Madison Guaranty/Whitewater investigation. With so many individuals who have contributed to this endeavor, a mere list of names would not do justice to their public service. Nonetheless, three individuals deserve special recognition for their efforts.

Steve Irons was the FBI supervisor in charge of the law enforcement agents conducting this investigation. His diligence led to the Hale prosecution from which much of the work of this Office stems. His uncompromising standard of professionalism was exemplary.

W. Hickman Ewing Jr. was, for nearly all of this investigation, the Deputy Independent Counsel responsible for the Arkansas-related areas of our work. A former United States Attorney, he has devoted over 30 years of his life to public service -- first on a patrol boat in

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Vietnam and then as a career professional federal prosecutor. Without his command of the details of the various aspects of this investigation, none of what this Office achieved would have been possible.

And, the extraordinary service to the country, at great personal sacrifice, provided by my predecessor, Kenneth W. Starr, will one day be recognized and fully appreciated. Those who were honored to serve with Judge Starr already know that no more decent individual graced this Office.

Finally, to those members of the public who served on the grand juries and petit juries that heard the matters presented by our Office, I thank them for their remarkable dedication, fairness, thoughtfulness and objectivity so that justice might prevail.

With great pride and thanks to the many people over the years who made this possible, I respectfully submit this Final Report concluding the Madison Guaranty/Whitewater investigation.

Robert W. Ray
Independent Counsel
Washington, D.C.
January 5, 2001

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Under 28 U.S.C. § 594(h) (1) (B),[1] Independent Counsel Robert W. Ray [2] files this Final Report on In re: Madison Guaranty Savings & Loan Association, Div. No. 94-1 (D.C. Cir. [Spec. Div.] Aug. 5, 1994), an investigation into whether any federal crimes, other than a class B or C misdemeanor, were committed relating to James B. McDougal's, President William J. Clinton's, or Hillary Rodham Clinton's relationships with Madison Guaranty Savings & Loan Association ("Madison Guaranty"), Capital Management Services, Inc. ("CMS"), or Whitewater Development Corporation ("Whitewater Development" or "Whitewater"). This Report describes previously unreported work of the Independent Counsel involving the core jurisdiction in the Special Division's August 5, 1994 order. [3]

Volume I provides this summary introductory chapter. Accompanying this chapter are appendices reflecting the work of the Independent Counsel, including: a discussion of the legislative history of the Ethics in Government Act; a summary of the savings and loan ("S&L")

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[1] On June 30, 1999, the Independent Counsel Reauthorization Act of 1994, 28 U.S.C. §§ 591 through 599 (1994), expired and was not extended by Congress. The Independent Counsel is authorized, under 28 U.S.C. § 599 (providing for continuation of pending matters), to issue this Final Report.

[2] On October 18, 1999, Robert W. Ray was appointed Independent Counsel, under 28 U.S.C. § 593(e), following the resignation of Independent Counsel Kenneth W. Starr.

[3] This Report will address all previously unreported matters within the jurisdiction of the Independent Counsel, excluding matters arising from the Special Division's sealed jurisdictional Order dated December 21, 1994. See Order, In re: Madison Guaranty Savings & Loan Ass'n, Div. No. 94-1 (D.C. Cir. [Spec. Div] Dec. 21, 1994), and the Special Division's jurisdictional Order relating to Monica Lewinsky and others, Order, In re: Madison Guaranty Savings & Loan Ass'n, Div. No. 94-1 (D.C. Cir. [Spec. Div.] Jan. 16, 1998).

The Independent Counsel has previously filed four reports with the Special Division: Final Report of the Independent Counsel (In re: Madison Guaranty Sav. & Loan Ass'n) In re: William David Watkins and In re: Hillary Rodham Clinton, (published Oct. 18, 2000) (reporting on matters commonly referred to as the "Travel Office" investigation); Final Report of the Independent Counsel (In re: Madison Guaranty Savings & Loan Ass'n) In re: Anthony Marceca, (July 28, 2000) (reporting on a matter commonly referred to as the "FBI Files" matter); Final Report of the Independent Counsel (In re: Madison Guaranty Sav. & Loan Ass'n), and In re: Bernard Nussbaum, (July 28, 2000) (reporting on a matter related to the FBI Files matter);

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crisis that places Madison Guaranty's failure into the larger context of the nationwide savings and loan institution failures; identification of all jurisdictional grants; a chronology of events; and summaries of all prosecutions.

The remaining three volumes provide evidentiary summaries and analyses of the Independent Counsel's work: Part A discusses Whitewater Development Corporation; Part B discusses Madison Guaranty Savings & Loan and the Rose Law Firm ("Rose"); and Parts C, D, E, and F discuss conduct occurring in Washington, D.C. following the election of President Clinton.

I. INTRODUCTION

On September 1, 1992, the Resolution Trust Corporation ("RTC") submitted Criminal Referral No. C-0004 to the U.S. Attorney for the Eastern District of Arkansas and the FBI Little Rock field office. The referral concerned criminal allegations involving Madison Guaranty -- a failed thrift that cost taxpayers an estimated $73 million -- and other entities controlled by its principal shareholder, Jim McDougal. Among these entities was the Whitewater Development Company, Inc., a real estate venture Jim McDougal and his wife Susan McDougal owned as equal partners with Governor Bill Clinton and Hillary Clinton. The referral named Jim and Susan McDougal as suspects and Governor and Mrs. Clinton as witnesses.

Between June and September 1993, RTC agents prepared nine additional criminal referrals on Madison Guaranty. The Small Business Administration ("SBA") submitted a separate criminal referral alleging fraud at CMS, a federally licensed and regulated Small Business Investment Company ("SBIC") operated by David Hale, a Little Rock municipal judge.

Criminal investigations of Madison Guaranty and CMS were started in 1993 before the

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Report on the Death of Vincent W. Foster Jr. (Oct. 10, 1997).

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appointment of an independent counsel. These investigations were initially conducted by the Little Rock field office of the Federal Bureau of Investigation ("FBI") and the U.S. Attorney for the Eastern District of Arkansas. Because of potential connections between the RTC and SBA allegations and the conduct of Arkansas Governor Jim Guy Tucker, Stephen Smith, and Seth Ward, the U.S. Attorney for the Eastern District of Arkansas, Paula Casey, eventually recused herself and her office from all Madison Guaranty-related matters on November 5, 1993. On November 9, 1993, the Justice Department's Criminal Division took over prosecuting Hale and investigating Madison Guaranty and CMS, under the leadership of Donald B. Mackay, a veteran senior trial attorney in the Fraud Section and former U.S. Attorney for the Southern District of Illinois.

On January 12, 1994, President Clinton asked Attorney General Janet Reno to name a special counsel to continue the investigation into Madison Guaranty and related matters. The provisions of the Ethics in Government Act permitting the appointment of an independent counsel by a three-judge panel, 28 U.S.C. §§ 591-599, had expired. In lieu of a statutory appointment, the Attorney General appointed a regulatory independent counsel pursuant to Department of Justice regulations. On January 20, 1994, Attorney General Reno appointed Robert B. Fiske Jr., a former U.S. Attorney for the Southern District of New York, as regulatory Independent Counsel.

Mr. Fiske's broad jurisdictional mandate gave him authority to investigate "whether any individuals or entities have committed a violation of any federal criminal or civil laws relating in any way to President William Jefferson Clinton's or Hillary Rodham Clinton's relationships with 1) Madison Guaranty Savings and Loan Association, 2) Whitewater Development Corporation,

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or 3) Capital Management Services."[4] Mr. Fiske opened offices in Little Rock and Washington, D.C., eventually employing more than 120 FBI and IRS agents to continue the investigation.

On June 30, 1994, President Clinton signed the Independent Counsel Reauthorization Act of 1994 ("the Act") into law, with the following statement:

> I am pleased to sign into law S. 24, the reauthorization of the Independent Counsel Act. This law, originally passed in 1978, is a foundation stone for the trust between the Government and our citizens. It ensures that no matter what party controls the Congress or the executive branch, an independent, nonpartisan process will be in place to guarantee the integrity of public officials and ensure that no one is above the law.
>
> Regrettably, this statute was permitted to lapse when its reauthorization became mired in a partisan dispute in the Congress. Opponents called it a tool of partisan attack against Republican Presidents and a waste of taxpayer funds. It was neither. In fact, the independent counsel statute has been in the past and is today a force for Government integrity and public confidence.
>
> This new statute enables the great work of Government to go forward -- the work of reforming the Nation's health care system, freeing our streets from the grip of crime, restoring investment in the people who make our economy more productive, and the hard work of guaranteeing this Nation's security -- with the trust of its citizens assured.
>
> It is my hope that both political parties would stand behind those great objectives. This is a good bill that I sign into law today -- good for the American people and good for their confidence in our democracy.[5]

Under the Act, Attorney General Reno determined additional investigation on these matters was warranted and applied to the Special Division of the Court "for the appointment of an Independent Counsel to investigate whether any violations of federal criminal law were committed by James B. McDougal or any other individual or entity relating to Madison Guaranty

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[4] 28 C.F.R. § 603.1; Final Report of Robert B. Fiske Jr., Independent Counsel, In re: Madison Guaranty Savings and Loan Association at 1-2 (D.C. Cir. [Spec. Div.] (Oct. 6, 1994) (under seal) [hereinafter "Fiske Report"].

[5] Statement on Signing the Independent Counsel Reauthorization Act of 1994 (June 30, 1994), in Public Papers of the Presidents of the United States: William J. Clinton 1994 Book I (Jan. 1 to July 31, 1994) at 1168-69 (1995).

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Savings & Loan Association, Whitewater Development Corporation, or Capital Management Services, Inc."[6]

The Attorney General's application described the background of the Fiske investigation:

- The RTC had referred numerous criminal allegations to the U.S. Attorney for the Eastern District of Arkansas, arising out of an inquiry into the operation of Madison Guaranty, a failed savings and loan that was owned by Jim McDougal, a partner of President and Mrs. Clinton in Whitewater Development;

- The U.S. Attorney's Office in Little Rock had begun prosecuting David Hale who had ties to both the Clintons and McDougal;

- Hale had alleged that his associates, including McDougal and the Clintons, had also unlawfully obtained and used CMS funds;

- In November 1993, the Fraud Section of the Criminal Division of the Department of Justice took over Hale's prosecution and the inquiry into RTC allegations of misapplication of funds from Madison Guaranty (several of which were determined to be sufficiently specific and credible to provide grounds for a preliminary investigation under the statute); and

- On January 20, 1994, she had appointed Robert B. Fiske Jr. as regulatory independent counsel to take over all the investigations relating to Madison Guaranty.[7]

The Attorney General said although Mr. Fiske had not reported his investigative results or the direction of his investigation to the Department of Justice, he had reviewed her Application and affirmed there were reasonable grounds to believe that additional investigation was warranted under 28 U.S.C. § 592(c) (1) (A). The Attorney General concluded the circumstances warranted the appointment of a statutory independent counsel "because investigation by the Department of Justice of the allegations of violations of criminal law by McDougal and other individuals associated with President and Mrs. Clinton and Madison

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[6] Application To The Court Pursuant To 28 U.S.C. § 592(c) (1) For The Appointment Of An Independent Counsel, In re: Madison Guaranty Sav. & Loan Ass'n (D.C. Cir. [Spec. Div.] July 1, 1994) [hereinafter "Application"].

[7] Fiske Report, supra note 4, at 1.

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Guaranty Savings & Loan, Whitewater Development Corporation, and Capital Management Systems would present a political conflict of interest."[8] The Attorney General asked the Court to appoint Robert B. Fiske Jr. "so that he may continue his ongoing investigation without disruption[.]"[9]

On August 5, 1994, the Special Division appointed the Honorable Kenneth W. Starr, a former federal circuit court judge and Solicitor General, as Independent Counsel.[10] The Special Division said Judge Starr's appointment was not "inten[ded] to impugn the integrity of the Attorney General's appointee [Fiske], but rather to reflect the intent of the Act that the actor be protected against perceptions of conflict."[11] The Special Division gave Independent Counsel Starr jurisdiction to investigate "whether any individuals or entities have committed a violation of federal criminal law, other than a Class B or C misdemeanor or infraction, relating in any way to James B. McDougal's, President William Jefferson Clinton's, or Mrs. Hillary Rodham Clinton's relationships with Madison Guaranty Savings and Loan Association, Whitewater Development Corporation, or Capital Management Services, Inc."[12] On October 18, 1999, the Special Division appointed Robert W. Ray, a career federal prosecutor, Independent Counsel for all matters previously under the jurisdiction of Independent Counsel Starr.

II. SCOPE OF REPORT

The Independent Counsel reporting provision, 28 U.S.C. § 594(h) (1) (B) (1994), mandates that before the Office is terminated, it shall:

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[8] Application, supra note 6, at 3.

[9] Id. at 4 n. 2.

[10] Order, In re: Madison Guaranty Sav. & Loan Ass'n, (D.C. Cir. [Spec. Div.] Aug. 5, 1994).

[11] Id. at 4.

[12] Id. at 1.

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> file a final report . . . setting forth fully and completely a description of the work of the independent counsel, including the disposition of all cases brought.

This statutory language changed the pre-1994 law, which contained a so-called "declination clause" requiring a final report to include:

> a description of the work of the independent counsel, including the disposition of all cases brought, and the reasons for not prosecuting any matter within the prosecutorial jurisdiction of such independent counsel.[13]

The Independent Counsel Reauthorization Act of 1994 did not include an express declination clause.

The declination clause's omission did not reflect a congressional determination that an independent counsel could never articulate his reasoning about the conclusion of matters under investigation. The declination clause's deletion resulted from a compromise adopted in the House and Senate Conference Committee during reauthorization. The Independent Counsel gave careful consideration to the legislative history about the omission of the "declination clause,"[14] and determined the analysis and findings contained in this Report are consistent with Congress's intention as reflected by the statute's language and legislative history.[15] This Report has been prepared with that legislative history and the factors adduced by Congress in mind.

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[13] 28 U.S.C. § 594(h) (1) (B) (1993).

[14] A more complete summary of the legislative history relating to the declination clause is contained in Vol. I, Appendix 1.

[15] See also Final Report of the Independent Counsel In re: Eli J. Segal at 2 (D.C. Cir. [Spec. Div.] Dec. 19, 1997) (deciding "to include in the report sufficient detail to assure the Court, and any others authorized to read it, that our investigation was thorough, professional and competent; that the decision to decline prosecution was based on the merits and on the evidence adduced by the Independent Counsel; and that resources were used wisely and economically").

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III. BACKGROUND TO APPOINTMENT OF THE STATUTORY INDEPENDENT COUNSEL

Before the appointment of Independent Counsel Kenneth W. Starr, three Department of Justice prosecutors examined the available evidence related to Madison Guaranty, Whitewater Development, and CMS. Each succeeding investigation built on its predecessor's work, exhausting investigative leads in the traditional manner of all Department of Justice investigations.[16]

A. United States Attorney for the Eastern District of Arkansas in Little Rock and the FBI Little Rock Field Office (through November 5, 1993).

1. The Borod & Huggins Report and the Opening of a Federal Criminal Investigation.

In the spring of 1986, the Federal Home Loan Bank Board ("FHLBB") examined the records and finances of Madison Guaranty. They discovered a savings and loan institution with insufficient assets, overextended liabilities, and unlawful banking and loan practices -- something quite common in the mid-1980s when many similar thrifts were failing.[17]

Because of the examination, in July 1986, the FHLBB ordered McDougal removed from the management of Madison Guaranty. Soon the board of directors of the thrift hired independent outside counsel, Borod & Huggins, to review the thrift and McDougal's conduct. In December 1986, the firm began an extensive examination of Madison Guaranty. In a report of

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[16] In addition to investigations by the U.S. Attorney for the Eastern District of Arkansas, the Department of Justice's Criminal Division, and regulatory Independent Counsel Fiske, other governmental entities started investigations before the appointment of a statutory independent counsel that related in whole or in part to President and Mrs. Clinton, Jim and Susan McDougal, Madison Guaranty, Whitewater Development, and CMS. The U.S. House of Representatives Banking Committee, U.S. Senate Banking Committee, the FDIC, the RTC Professional Liability Section ("RTC-PLS"), the FDIC Office of Inspector General ("FDIC-OIG"), the RTC Office of Inspector General ("RTC-OIG"), and Pillsbury, Madison, & Sutro (as a contractor for the RTC) all conducted investigations into matters that would later be referred to the Independent Counsel.

[17] A larger discussion of the savings and loan crisis is set forth at Vol. I, Appendix 2.

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its investigation, Borod & Huggins concluded, "[f]rom the time the McDougals acquired Madison Guaranty . . . they began to use it for their personal benefit and that of their friends. . . . The record is replete with various transactions to or for the benefit of the McDougals and their friends and relatives."[18] The Report also said, "[I]t appears . . . that certain criminal referrals may be appropriate in connection with falsification of Association records, as well as potential misapplication of Association funds."[19] Borod & Huggins concluded that "facts connected with the following transactions may give rise to conclusions of apparent criminal misconduct":

- Madison Guaranty's frequent payment of real estate commissions to Susan McDougal, Jim McDougal, Seth Ward, Davis Fitzhugh, and others, where no real estate brokerage or sales services were rendered.

- David Hale's sale of overvalued property to Dean Paul Ltd., financed by Madison Guaranty. The sale enabled David Hale's SBIC, CMS, to fund the down payment made by Castle Sewer & Water when it acquired a utility system located on property known as Castle Grande.

- During the March 1986 FHLBB examination, the minutes of Madison Guaranty's service affiliate, Madison Financial Corporation ("Madison Financial") were, apparently at the instruction of Madison Guaranty President John Latham, fraudulently created and presented to the FHLBB examiners as accurate.

- With the knowledge of Jim McDougal, Madison Financial and Madison Guaranty, Robert Palmer, an associate of McDougal's, routinely created inflated real estate appraisals that were used to justify loans made by Madison Guaranty.[20]

On March 19, 1987, Madison Guaranty sent a criminal referral to the U.S. Attorney for the Eastern District of Arkansas and the FBI Little Rock field office, which had, two months before the receipt of the referral, opened an investigation into possible criminal activities at Madison Guaranty.

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[18] Borod & Huggins, Madison Guaranty Savings & Loan Association Special Counsel Investigative Report at 4 (Mar. 3, 1987) [hereinafter "Borod & Huggins Report"].

[19] Id. at 7.

[20] Id. at 161-68.

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During the months that followed, the federal criminal investigation of Madison Guaranty intensified. Jim McDougal and two of Susan McDougal's brothers -- James Henley and David Henley -- were indicted in November 1989 on federal criminal charges relating to Madison Guaranty and Madison Financial, the service corporation subsidiary. The president of Madison Guaranty, John Latham, pleaded guilty to a felony charge in February 1990. The trial took place in Little Rock in late May and early June 1990, and the proceedings focused on several financial and land transactions related to property previously owned by the Industrial Development Corporation ("IDC") and developed under the name "Castle Grande." On June 4, 1990, the judge dismissed the charges against David Henley. On June 7, 1990, a jury acquitted Jim McDougal and Jim Henley. Attorneys from the Rose Law Firm, which had represented Madison Guaranty, and were representing the RTC as conservator for Madison Guaranty, attended and monitored this trial.

2. The Relationship between the McDougals and the Clintons Was Subjected to Media Scrutiny.

On March 8, 1992, a New York Times article questioned the relationship between Governor and Mrs. Clinton, the McDougals, the Whitewater land venture, and Madison Guaranty.[21] Questions were also raised before and after the article ran about Mrs. Clinton's work for Madison Guaranty while she was a lawyer with Rose, and about Governor Clinton's role in McDougal's decision to retain Mrs. Clinton. The Clinton campaign responded to the inquiries and the presidential campaign moved on to other issues.

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[21] Jeff Gerth, The 1992 Campaign: Personal Finances; Clintons Joined S. & L. Operator In an Ozark Real Estate Venture, N.Y. Times, Mar. 8, 1992 at A1.

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3. RTC Criminal Referral No. C-0004.

The media allegations prompted the RTC to send investigators to Little Rock in the spring of 1992 to review Madison Guaranty records. In early September 1992, the RTC made a criminal referral to the FBI Little Rock field office and the U.S. Attorney for the Eastern District of Arkansas.[22] RTC Criminal Referral No. C-0004 alleged Jim and Susan McDougal fraudulently misused bank accounts they controlled at Madison Guaranty, and fraudulently advanced funds from Madison Guaranty for their own and associated entities' benefit. The referral alleged that one of the entities the McDougals might have improperly advanced funds to -- and whose account the McDougals might have improperly used -- was Whitewater Development. Governor and Mrs. Clinton, as partners with the McDougals in Whitewater Development, were listed as witnesses.

Because Criminal Referral C-0004 arrived in Little Rock only two months before the presidential election, the U.S. Attorney for the Eastern District of Arkansas, Charles A. Banks, deferred investigation until after the election. The FBI concurred in that decision. After Governor Clinton was elected President, Banks recused himself and sent the referral to the Department of Justice in Washington, D.C., though no substantive investigation was conducted until the next year.

4. FBI Requested Search Warrant for CMS.

On Monday, July 19, 1993, the FBI Little Rock field office applied to a federal magistrate judge in Little Rock for a search warrant for the offices of CMS. As a Small Business Investment Corporation ("SBIC"), CMS was funded and regulated by the federal Small Business

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[22] A "criminal referral" is a means where a financial institution, or an agency charged with oversight of financial institutions, refers possible criminal charges to the FBI and the United States Attorney within whose jurisdiction the financial institution is located.

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Administration ("SBA"). In May 1993, the SBA had sent a criminal referral to the FBI after an audit suggested David Hale was involved in fraudulent activity and that numerous loans made by CMS were not being repaid. Although the purpose of federal SBICs is to provide loans to socially and economically disadvantaged individuals, the FBI suspected Hale had used CMS to lend money to his associates and political allies. Two of the loans mentioned in the search warrant by the FBI were a $300,000 loan to Susan McDougal d/b/a (doing business as) Master Marketing in April 1986, and a $150,000 loan to Castle Sewer and Water, a corporation controlled by Jim Guy Tucker. The loan to Susan McDougal has never been repaid.

The FBI was aware of the sensitive nature of its CMS investigation. Hale was a municipal judge in Little Rock; he was also an associate of, and sometimes business partner with, various prominent politicians, including Jim Guy Tucker. The SBA, in its criminal referral, had specifically questioned a CMS loan to Castle Sewer and Water. FBI agents also found CMS's links to Madison Guaranty significant, particularly several loans made by CMS using $825,000 Madison Guaranty had loaned to Dean Paul in February 1986. The FBI suspected this Madison Guaranty loan was made to Paul acting as "straw purchaser" -- a purchaser in name only -- to funnel Madison Guaranty funds to CMS. In addition, the FBI knew the RTC was preparing additional criminal referrals on possible crimes at Madison Guaranty. In late May and early June 1993, RTC investigators had returned to Little Rock to undertake a more thorough review of the activities at Madison Guaranty.

On July 19, 1993, FBI Supervisory Special Agent Steve Irons presented a search warrant affidavit to a magistrate judge in Little Rock. The next day, July 20, 1993, the magistrate judge signed the search warrant for Hale's CMS office, and the morning of July 21, the FBI searched Hale's CMS office. Among the loan files and other documents they seized were those about

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Susan McDougal's $300,000 Master Marketing loan. The FBI also found evidence of a fraudulent transaction from September 1988 involving Hale and two other Little Rock attorneys -- Charles Matthews and Eugene Fitzhugh.[23]

On August 16, 1993, Paula Casey became the U.S. Attorney for the Eastern District of Arkansas, appointed by President Clinton. On September 23, 1993, a grand jury in Little Rock returned a four-count indictment against Hale, Matthews, and Fitzhugh, charging a conspiracy to defraud the United States, acting by and through the SBA.[24] That same day, Hale publicly alleged certain activities at CMS involved President Clinton, Governor Tucker, and the McDougals.

5. The RTC Prepared Nine Additional Referrals Involving Madison Guaranty.

When the initial investigation of Hale was nearing indictment, the RTC investigators were completing additional criminal referrals on Madison Guaranty. Nine new referrals were approved in Kansas City on September 24, 1993, and sent to Washington, D.C. -- deviating from the RTC's normal process of sending the referrals directly to the FBI and U.S. Attorney in the district where the subject financial institution was located.

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[23] The statute of limitations on the offenses committed by Hale, Matthews and Fitzhugh was to expire in September 1993.

[24] The White House monitored the Hale investigation. Three days before Hale's indictment, on September 20, 1993, Jim Blair telephoned senior presidential advisor Bruce Lindsey. Among the entries in Lindsey's contemporaneous notes of his conversation with Blair were the following:

> McDougal called Heuer [McDougal's attorney] to tell him that Hale had been to see him. McDougal told Heuer that Hale had tried to get him to fabricate a story about BC and JGT. Gerth tried to get Sam Heuer to tell him where McDougal was. Heuer wouldn't. Heuer asked Brent Bumpers [an Assistant United States Attorney], asked whether indictment against Hale, asked whether indictment . . . . —against Hale, not McDougal.

J. McDougal 4/3/97 GJ at 57-59.

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On September 29, 1993, Jean Hanson, General Counsel of the Treasury Department, which oversaw the RTC, told Bernard Nussbaum, Counsel to the President, that the RTC planned to issue more criminal referrals on Madison Guaranty, which would name the Clintons as witnesses and possible beneficiaries of wrongdoing. Hanson also told Mr. Nussbaum the referrals would name Governor Tucker as a criminal target. Mr. Nussbaum told presidential counselor Bruce Lindsey, who, on October 4 or 5, 1993 in turn told President Clinton.[25]

On October 8, 1993, the RTC in Washington sent the nine additional criminal referrals on Madison Guaranty to the FBI and U.S. Attorney's office in Little Rock. All nine new referrals named McDougal a "suspect." The Clintons were listed as witnesses in one -- CR-0196 -- identifying potential crimes related to a fundraiser held at Madison Guaranty for Governor Clinton in April 1985 and discussing Mrs. Clinton's legal representation of Madison Guaranty that same month before the Arkansas Securities Department.

On September 24, 1993, Casey told Little Rock FBI agents she would have to recuse herself from the investigation of Madison Guaranty and the referrals. She cited her association with Governor Tucker, Stephen Smith, and Seth Ward (though not the Clintons) as the basis for her recusal.

Also around this time, the Department of Justice returned the original C-0004 referral to the U.S. Attorney's office. Earlier in 1993, an attorney in the Fraud Section of Justice's Criminal Division had prepared a memorandum concluding that the Department should not investigate the allegations in the C-0004 referral. On October 27, 1993, Casey formally declined additional investigation of the charges in the C-0004 referral, stating that she agreed with the memorandum's conclusion that it lacked prosecutive merit.

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[25] On October 6, President Clinton met with Governor Tucker at the White House.

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The RTC referrals became publicly known on November 1, 1993.[26] On November 5, 1993, at the urging of Justice officials in Washington, D.C., Casey formally recused herself and her office from all Madison Guaranty-related matters. Before Casey's recusal from Hale's prosecution and the Madison Guaranty investigation, the U.S. Attorney's office in Little Rock had issued fifty grand jury subpoenas.

B. Department of Justice Criminal Division Fraud Section (November 1993 to January 1994).

Responsibility for Hale's prosecution and all ten RTC Madison Guaranty criminal referrals was transferred to the Department of Justice's ("DOJ") Criminal Division. Donald Mackay, an experienced career prosecutor, took the lead on the prosecution of Hale and others and for the Madison Guaranty criminal investigation. Mackay determined that "the 1992 referral [#C-0004], which was declined by DOJ, suggest[ed] a pattern of small check kites often for McDougal's benefit or for the benefit of those close to him. Standing alone, these [were] not particularly significant but in the greater context they may be a part of McDougal's general pattern."[27] Mackay worked with Little Rock FBI agents, and quickly developed an investigative strategy. Among the steps included in his strategy memorandum of November 26, 1993 were:

- Reviewing and evaluating the complete referrals from the RTC.
- Tracing of all funds in the $825,000 transaction with special attention to the $300,000 loan to Susan McDougal, partially benefiting Whitewater, and issuing subpoenas for all Whitewater accounts.
- Obtaining information about whether, and to what extent, the "Mitchell" and "Rose" law firms of Little Rock performed any legal work on any of the transactions mentioned in

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Both men later said they did not discuss the referrals at this meeting.

[26] See Susan Schmidt, U.S. Is Asked to Probe Failed S&L, Wash. Post, Nov. 1, 1993, at A1. Bruce Ingersoll and Paul Barrett, U.S. Investigating S&L Chief's '85 Check to Clinton, SBA-Backed Loan to Friends, Wall St. J., Nov. 1, 1993, at A3.

[27] Mackay typewritten notes (undated) (Doc. No. JJN 000153).

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the referrals.[28]

Mackay began a grand jury investigation, and issued subpoenas for various records, including the original Madison Guaranty records. On December 23, 1993, DOJ attorneys issued (on behalf of a Little Rock grand jury) a subpoena to David Kendall, personal counsel to President and Mrs. Clinton, calling for all documents in his or his law firm's possession related to Whitewater Development, Madison Guaranty, David Hale, and CMS.[29] A similar subpoena for documents was issued that day to Lisa Foster, widow of former Deputy Counsel to the President Vincent W. Foster Jr.[30]

Between January 11 and 13, 1994, Mackay caused to be served approximately thirty grand jury subpoenas demanding documents throughout Arkansas, including to Governor Jim Guy Tucker, Seth Ward (Webb Hubbell's father-in-law and a former Madison Financial employee), Rose, and Rose attorney Richard Massey.

C. Regulatory Independent Counsel Robert B. Fiske Jr. (January 20, 1994 to August 5, 1994).

On January 12, 1994, President Clinton directed Attorney General Reno to appoint an independent counsel to investigate Whitewater and Madison Guaranty related allegations. The Attorney General announced she would comply with the President's request, and Mackay's grand jury subpoenas issued to Rose and Massey were withdrawn. Mackay ended his inquiry, having issued forty-five subpoenas during his two-month stewardship of the investigation. On January 20, 1994, Attorney General Reno appointed Robert B. Fiske Jr. as regulatory Independent

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[28] Memo from Donald Mackay, Dwight Bostwick, and Jim Nixon, Trial Attorneys, to G. Allen Carver Jr., Principal Deputy Chief, Fraud Section, and John Arterberry, Deputy Chief, Fraud Section at 6-7 (Nov. 26, 1993) (Doc. Nos. GAC000368 through 374).

[29] Grand Jury Subpoena No. 55 (E.D. Ark. Dec. 23, 1993).

[30] Grand Jury Subpoena No. 55A (E.D. Ark. Dec. 23, 1993).

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Counsel.

Independent Counsel Fiske took over the Hale, Matthews, and Fitzhugh prosecution, and the investigation of all matters relating to Madison Guaranty, including the ten criminal referrals and the $825,000 Dean Paul loan. Fiske also established a Washington office to investigate all matters relating to Vincent W. Foster Jr.'s death, and to investigate possibly improper contacts that occurred between White House personnel, Department of Treasury officials, and RTC personnel about the Madison Guaranty investigation.

Fiske said his Little Rock investigation involved three separate areas. The first area involved President and Mrs. Clinton's relationships with Whitewater and Madison Guaranty, examining these questions:

1) Whether funds were diverted from Madison Guaranty for the benefit of Whitewater;

2) Whether funds were diverted from Madison Guaranty for the benefit of President Clinton's gubernatorial campaigns in the 1980s; and

3) Whether the Clintons were offered a fifty percent ownership interest in Whitewater by Jim McDougal without any, or only minimal, financial contribution in return for some quid pro quo and, if so, whether the quid pro quo was that then-Governor Clinton, directly or indirectly, allowed Madison Guaranty to remain open after it became insolvent.[31]

The second area of Fiske's Little Rock investigation involved allegations made by David Hale, CMS's former president, about the involvement in 1986 of Governor Clinton and Jim McDougal in a $300,000 loan from CMS to Master Marketing, an entity owned and controlled by Susan McDougal. This aspect of Fiske's investigation examined whether some of the loan proceeds were improperly diverted to Whitewater, and whether Hale agreed to make that and other loans in return for the payment of $502,000 to recapitalize CMS through an $825,000 loan

[31] Fiske Report, supra note 4, at 13-14.

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from Madison Guaranty.

The third area was the ten RTC criminal referrals. By January 1994, FBI agents in Little Rock had started investigating these referrals, alleging a broad range of criminal conduct at Madison Guaranty by the McDougals and other Madison Guaranty insiders, including Arkansas Governor Jim Guy Tucker.

Independent Counsel Fiske obtained a superseding indictment of Hale, Matthews, and Fitzhugh on February 7, 1994. On March 22, 1994, David Hale pleaded guilty to two felony counts. As part of Hale's plea agreement, he agreed to provide information and truthful testimony.

As Fiske's Little Rock investigation progressed, other matters involving potential violations of federal criminal law were examined.[32] Among the additional matters investigated by Fiske were:

1) Possible destruction of documents at Rose after Mackay's subpoena was served and withdrawn.

2) Whether Associate Attorney General Webster Hubbell engaged in fraudulent billing practices while a member of Rose. (These allegations subsequently led to Hubbell's resignation as Associate Attorney General in early April 1994).

3) Whether any violations of federal criminal law occurred during Governor Clinton's 1990 campaign for re-election, including whether campaign officials and others willfully structured transactions to avoid filing currency transaction reports, and whether President and Mrs. Clinton committed any federal tax violations with a $35,000 campaign fund account placed in the name of Bill Clinton following the 1990 gubernatorial election.

4) Whether Seth Ward fraudulently agreed with McDougal and others at Madison Guaranty to hold certain real estate in his name for the purpose of misleading FHLBB examiners, and whether McDougal caused a Madison Guaranty subsidiary, Madison Financial, to compensate Ward

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[32] In Fiske's Report he listed twelve such matters. Id. at 15-18.

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with inflated commission income in return.

In June 1994, Congress passed the Independent Counsel Reauthorization Act. The Act required that a Special Division of the federal judiciary appoint all independent counsel. President Clinton signed the bill into law on June 30, 1994. Attorney General Reno applied to the Special Division of the United States Court of Appeals for the District of Columbia Circuit to appoint a statutory independent counsel to investigate the matters within the prior mandate of regulatory Independent Counsel Fiske.

On June 30, 1994, the same day that President Clinton signed the Independent Counsel Reauthorization Act into law, Fiske issued a report outlining his findings in the Foster death investigation. Fiske concluded Foster had committed suicide in Fort Marcy Park in northern Virginia. Fiske also announced he had concluded that charges should not be brought relating to the contacts between White House and Treasury officials, and filed a report under seal with the Special Division.

Following his replacement by Independent Counsel Starr, Fiske filed another report under seal with the Special Division on the overall Madison Guaranty investigation, and the status of the various matters under active investigation. Fiske said that as of August 5, 1994, the Office had conducted over 700 interviews in and outside of the grand jury; over 1,200 boxes of documents, totaling at least five million pages and 300 rolls of microfilm, were produced in response to subpoenas and voluntary productions in Little Rock; and over 300 interviews in and outside the grand jury had occurred in Washington, D.C.[33]

Fiske also summarized "completed matters" and "ongoing matters." Fiske reported he had completed the Foster death investigation, the White House-Treasury Contacts investigation,

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[33] Id. at 11-12.

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the Little Rock-based prosecution of Hale, Matthews, and Fitzhugh, and the Rose destruction of documents investigation. Among the myriad ongoing matters were:

- The investigation of whether documents were removed from Foster's office following his death;
- The Department of Justice's handling of the RTC referrals, including whether anyone tried to influence the referrals' timing and content, and whether any RTC official tried to improperly influence the RTC's investigation into possible civil claims on behalf of Madison Guaranty;
- President and Mrs. Clinton's relationships with Madison Guaranty and Whitewater, including whether the Clintons were aware that Whitewater had bought Lorance Heights from International Paper, and whether Governor Clinton had improperly caused state regulatory authorities to keep Madison Guaranty open while it was insolvent;
- Webb Hubbell's billing practices at Rose;
- President Clinton's relationship with CMS; the $300,000 Master Marketing Loan and related transactions (including the $825,000 loan to Dean Paul);
- Whether Governor Tucker had engaged in tax or bankruptcy fraud related to a Texas bankruptcy proceeding;
- RTC Criminal Referral 730CR0190, including allegations relating to a $260,000 loan to Tucker, and the later sale of certain property known as Southloop;
- Whether violations of federal law occurred regarding Governor Clinton's 1990 campaign for reelection;
- Fraudulent appraisal practices at Madison Guaranty, including back-dating appraisals;
- Bank fraud allegations regarding Chris Wade;
- The sale of a property at 1308 Main Street three times in a twenty-three month period at artificially inflated prices;
- The remainder of the RTC referrals;
- The use of "straw purchasers" for Madison Financial and development projects;
- The diversion of funds for use to improve the McDougals' house at 4 Bettswood in Little Rock; and

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- Possible criminal wrongdoing by Seth Ward.[34]

On August 5, 1994, the Special Division named Kenneth W. Starr as Independent Counsel.[35] Judge Starr's investigation built on Fiske's work and examined each of the remaining open issues as well as other related matters that became apparent as the investigation progressed. To a large degree, the scope of the Independent Counsel's investigation was fixed from the outset. Because of the unique situation, where the statutory Independent Counsel succeeded a regulatory Independent Counsel with plenary jurisdiction, Independent Counsel Starr was tasked with concluding a number of matters (for example, Governor Tucker's tax fraud) that had already come to the Fiske investigation's attention. The breadth of the criminality already uncovered by the Fiske investigation in part contributed to the length of time necessary for the statutory Independent Counsel to complete his work.

IV. SUMMARY OF THE INDEPENDENT COUNSEL'S INVESTIGATION, FINDINGS, ANALYSIS AND CONCLUSIONS

The remainder of this introductory Chapter contains a summary of the evidence found during this investigation, and of the findings and conclusions reached by the Independent Counsel on each issue examined. The particular evidentiary detail supporting the Independent Counsel's general findings and conclusions are contained in separate Parts of this Report.

At the core of the jurisdiction of the Independent Counsel warranting his appointment was this question:

> Did the President or Mrs. Clinton participate in or know about the crimes committed by Jim McDougal at Madison Guaranty, Whitewater Development, or CMS?

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[34] Id. at 21-59. The overwhelming majority of criminal allegations reported here were well known before the Independent Counsel assumed office.

[35] Order, In re: Madison Guaranty Sav. & Loan Ass'n, (D.C. Cir. [Spec. Div.] Aug. 5, 1994). A complete list of jurisdictional grants and referrals relating to the Madison Guaranty investigation is set forth in Vol. I, Appendix 3.

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Allegations about President and Mrs. Clinton's involvement arose from the McDougals' use of Madison Guaranty, Madison Financial, and Madison Bank & Trust ("Madison Bank") -- another financial entity they controlled -- to lend money to or for the benefit of Whitewater Development. Related to these core questions were supplemental questions about Mrs. Clinton's legal work for Madison Guaranty while a partner at Rose. In addition, the Office's jurisdiction encompassed the related question of the Clintons' and McDougals' subsequent actions -- did they provide false testimony or obstruct justice in an attempt to conceal their conduct?

To answer these questions, the Independent Counsel examined a voluminous documentary record (well in excess of 10 million pages), interviewed thousands of witnesses, issued in excess of 3,000 grand jury subpoenas in Little Rock and Washington, D.C., and reviewed all available reports of other agencies and entities about these matters.[36]

The Independent Counsel's investigation revealed James B. McDougal and others committed numerous federal crimes related to Madison Guaranty, Whitewater Development, and CMS. As a consequence, McDougal, his wife Susan McDougal, and twelve other defendants (including former Associate Attorney General Webb Hubbell and Arkansas Governor Jim Guy Tucker) eventually pleaded guilty or were convicted by juries of federal criminal offenses.[37]

Determining the facts and the roles of the Clintons in the various financial transactions and matters under consideration was made substantially more difficult by the age of the principal matters in question (most occurring between 1978 and 1986); by many percipient witness's claimed lack of memory; by a lack of cooperation through incomplete or non-production of records; by contumacious refusals to testify; and by unwarranted and novel privilege claims.

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[36] A chronology of events is set forth in Vol. I, Appendix 4.

[37] A complete summary of all prosecutions brought by this Office under the relevant

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The testimony of several key individuals likely to have substantial information about the events in question was unavailable to the Independent Counsel. Of seven central witnesses, three are now deceased -- Jim McDougal, Seth Ward, and Vincent Foster Jr.; one refused to cooperate with this investigation -- Susan McDougal; one did not provide the Office with substantial assistance -- Webb Hubbell; and two were the very people named in the jurisdictional mandate -- President and Mrs. Clinton.

The Independent Counsel concluded there was insufficient evidence to obtain and sustain a conviction on charges that either President or Mrs. Clinton knowingly participated in crimes related to Madison Guaranty, Whitewater Development, or CMS. Although there was sufficient evidence to establish that some of the statements given by both the President and the First Lady during official investigations were factually inaccurate, there was insufficient available evidence to establish beyond a reasonable doubt that President or Mrs. Clinton knowingly gave false statements, committed perjury, or otherwise obstructed investigations conducted by the Independent Counsel, or other investigative agencies and entities, from 1993 to the closure of the Independent Counsel's investigation.

The Independent Counsel inherited a wide-ranging investigation from regulatory Independent Counsel Fiske and his predecessors. As the investigation progressed, other credible allegations of potential criminal conduct emerged. The Office devoted substantial resources to investigating:

- The Clintons' and McDougals' investment in Whitewater Development;
- Jim McDougal's operation of Madison Guaranty, including his effort to increase its net worth through the issuance of preferred stock;
- The fraudulent land transaction known as IDC/Castle Grande involving McDougal and

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jurisdiction is set forth at Vol. I, Appendix 5.

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Seth Ward (Webb Hubbell's father-in-law);

- Mrs. Clinton's representation of Madison Guaranty, including how she came to be hired; her work before the Arkansas Securities Department on the preferred stock issue; and her work on the IDC/Castle Grande transaction;

- A fraudulent $825,000 nominee loan by McDougal to Dean Paul that, with the help of David Hale, benefited Jim and Susan McDougal, Governor Jim Guy Tucker, and Whitewater Development;

- Webb Hubbell's concealment of the work Rose did for Madison Guaranty from federal regulatory agencies;

- Currency transaction violations at the Perry County Bank that related to Governor Clinton's 1990 reelection campaign;

- Governor Tucker's tax and bankruptcy fraud in the sale of a cable television system he acquired;

- Whether Whitewater-related documents were removed from the office of Deputy White House Counsel Vincent Foster Jr., on the evening following his suicide;

- Alleged efforts by White House officials to dissuade or delay the Resolution Trust Corporation ("RTC") in its examination of Madison Guaranty, and the related alleged effort by Department of Justice officials to delay the RTC investigation;

- How Rose billing records for Madison Guaranty came to be found in the White House's residence in January 1996; and

- Payments to Webster Hubbell by the President's supporters when Hubbell was under investigation by the Independent Counsel.

About each of the foregoing matters, the Independent Counsel reports the following findings and conclusions:

A. The Relationship of the Clintons and the McDougals to the Whitewater Real Estate Venture, and Certain Loans by Madison Guaranty.

1. Findings.

The Independent Counsel examined the Clintons' relationship with the McDougals; their fourteen-year partnership in Whitewater Development; and Whitewater Development's relationship to the McDougals' financial institutions, Madison Guaranty and Madison Bank.

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The Independent Counsel reports the following findings about the purchase and sale of Whitewater Development:

- The Clintons and McDougals bought the Whitewater property in 1978 as an equal partnership. They transferred the land to Whitewater Development in 1979.
- Whitewater Development was a failed venture, losing over $80,000.
- The Clintons sold their interest in Whitewater Development to McDougal in 1992 for $1,000.

About the Clintons' and McDougals' interaction, operation, and management of Whitewater Development:

- The Clintons contributed approximately $36,862.33 to the Whitewater venture.
- The McDougals contributed approximately $80,076.03 to the Whitewater venture.
- The McDougals exercised substantially all managerial and operational control over Whitewater Development from 1978 until roughly 1986.
- After 1986, Mrs. Clinton took a more active role in the management and operation of Whitewater Development.

About loans provided to or benefiting Whitewater:

- The principal mortgage acquisition loan in the amount of $182,611.20 to purchase the Whitewater property from Citizens Bank & Trust was sometimes in arrears. Payments on the loan were erratic and irregular. The Clintons and McDougals had potential personal liability on this loan from 1978 until it was paid off in 1992.
- On several occasions, Jim McDougal, the Clintons and McDougals together, and Whitewater Development, took out loans for use in paying obligations of Whitewater Development:
    - Mrs. Clinton took out a loan from Madison Bank in the amount of $30,000 for the construction of a model home on Whitewater Estates. The Clintons and McDougals considered this a corporate obligation.
    - Governor Clinton took out a loan to retire Mrs. Clinton's construction loan. This action was necessary because bank regulators had asserted that Mrs. Clinton's loan violated banking regulations.
    - A loan from Madison Guaranty was taken out in Governor Clinton's name to

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retire another loan taken out in the name of Whitewater Development at Madison Bank. This action was necessary because bank regulators had also asserted that the Whitewater Development loan violated banking regulations.

About criminal conduct that occurred involving Whitewater Development:

- Jim McDougal engaged in numerous financial transactions for the benefit of Whitewater Development involving Madison Guaranty and other corporate entities. Many of these transactions were fraudulent. Jim McDougal was convicted of felonies in May 1996 arising from a series of fraudulent transactions he committed involving Madison Guaranty and CMS. Susan McDougal was convicted of felonies in May 1996 involving the fraudulent loan she received from CMS.

- Chris Wade, a real estate developer in Flippin, Arkansas, committed bankruptcy fraud in his purchase of Lot 7 of Whitewater Estates. Wade pleaded guilty in March 1995.

About the culpability of President and Mrs. Clinton:

- Insufficient evidence exists to establish beyond a reasonable doubt that either Governor or Mrs. Clinton knowingly participated in the criminal financial transactions used by McDougal to benefit Whitewater Development.

- Insufficient evidence exists to prove beyond a reasonable doubt that President Clinton knowingly gave false testimony in denying that he had ever received a loan from Madison Guaranty. Insufficient evidence also exists to prove beyond a reasonable doubt that Governor Clinton knew of or approved the fraudulent $300,000 CMS loan to Susan McDougal, or of the Lorance Heights acquisition.

2. Evidentiary Summary.

The Clintons' involvement with Whitewater began in 1978. Arkansas Attorney General Bill Clinton, Hillary Clinton, Jim McDougal, and Susan McDougal purchased 230.24 acres of undeveloped property in Marion County, Arkansas. In 1979, McDougal formed Whitewater Development and transferred the property to the new corporation.

The Clintons and McDougals agreed to share equally in Whitewater's profits and liabilities as equal partners. The Clintons and the McDougals were jointly and personally liable for a Whitewater Development debt held by a bank in Flippin, Arkansas, from 1978 until 1992, when the loan was repaid in full. The Clintons remained shareholders in Whitewater

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Development until December 1992, when they sold their shares to Jim McDougal for $1,000.

a. Origins of the Clinton-McDougal Relationship.

Jim McDougal and Bill Clinton first met in 1968, when they both worked for Senator J. William Fulbright during his reelection campaign. McDougal and Clinton became friends. In the 1970s, McDougal engaged in land development. In the decade's booming land market, most of McDougal's deals were profitable. Generally Jim McDougal would purchase land at a low price and then sell the lots on installment, taking notes from the purchasers. To finance these projects, Jim McDougal borrowed from various banks. Jim McDougal developed business and lending relationships that would carry into the future. One person he worked with was Harry Don Denton, who worked for Union National Bank. Their relationship continued for years, and Denton eventually came to work for Madison Guaranty.

Bill Clinton was elected Attorney General of Arkansas in November 1976 for a two-year term. He and Mrs. Clinton moved to Little Rock where she joined Rose, one of Arkansas's largest firms. While at Rose, Mrs. Clinton worked closely with two other lawyers in the litigation section: Webster L. Hubbell and Vincent W. Foster Jr.

b. Whitewater Estates -- Initial Purchase and Incorporation.

Bill Clinton participated in his first land deal with McDougal in 1977, a few months after he was sworn in as Arkansas Attorney General. Clinton bought about twenty acres of the Saltillo Heights development, located between the towns of Conway and Mayflower, about twenty miles from Little Rock. Attorney General Clinton invested no cash up front, and by mid-1978, he had earned a respectable profit.

Because the Saltillo Heights land deal proved profitable, Attorney General Clinton agreed to invest in another land deal with McDougal in 1978. Attorney General Clinton was running for

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Governor. McDougal planned to purchase and develop 230 acres of raw land on the White River in Marion County, in north-central Arkansas adjacent to the Missouri border, and then sell lots for vacation homes.

McDougal, for himself and Attorney General Clinton, signed a contract to purchase the property for $880 per acre. It was intended, from the outset, that Susan McDougal and Mrs. Clinton would also be partners in the venture. The understanding -- informal and apparently unrecorded -- was that the partners would share equally in repaying the loans, in financing improvements on the land, and in reaping the hoped-for profits from lot sales. The $20,000 down payment came from a loan issued by Union National to McDougal and Clinton. On August 2, 1978, the four partners borrowed $182,611.20 from Citizens Bank of Flippin, Arkansas to finance their remainder of the purchase of the Whitewater parcel. The bank took a mortgage on the property and all four partners personally guaranteed the loan's entire amount.

On June 18, 1979, while McDougal was serving in Governor Clinton's administration, the Clintons and McDougals incorporated the Whitewater Development Company, Inc. ("Whitewater Development"). On September 30, 1979, the four Whitewater partners deeded the Marion County property to the newly formed corporation. They remained personally liable as guarantors on the mortgage notes. The partners also remained joint guarantors on the original loan from Flippin bank until it was paid off early in 1992.

c. The McDougals Bought the Bank of Kingston, Renaming it the Madison Bank & Trust.

In October 1980, the McDougals, Steve Smith, Jim Guy Tucker, and several others acquired the Bank of Kingston in Madison County, Arkansas. The McDougals and Steve Smith moved to Kingston to manage the bank. McDougal was chairman of the board, and Steve Smith was president. They changed the bank's name to Madison Bank & Trust ("Madison Bank").

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d. Efforts to Market Whitewater.

In late 1980, to spur lot sales the Whitewater partners put a model home on Lot 13. Whitewater Development had substantial cash flow problems. Banking regulations prohibited the Kingston bank from loaning any more money to the McDougals, or any entity they owned. A loan intended for the corporation was taken out in Hillary Clinton's name. The Bank of Kingston loaned Mrs. Clinton $30,000 on December 16, 1980. The proceeds of this loan were put in the Whitewater Development bank account at the Bank of Kingston. The loan documents said the loan was secured by Lot 13, which Mrs. Clinton did not own. On December 28, 1980, a warranty deed transferred title to Lot 13 from Whitewater Development to Mrs. Clinton.

In August 1981, Madison Bank & Trust made a second loan of approximately $30,000 to Whitewater Development in the corporation's name. This loan was later retired by a loan taken out under Governor Clinton's name.

e. The McDougals Bought a Savings and Loan, Renaming it Madison Guaranty Savings & Loan Association.

McDougal became dissatisfied with Madison Bank because it did not allow him to invest in real estate. Under state law, savings and loans -- unlike banks -- could open branches outside their home counties, an option that appealed to McDougal. A thrift also could create a wholly owned subsidiary, called a service corporation, to buy real estate for itself.

On January 25, 1982, the McDougals acquired a controlling interest of a savings and loan located in Woodruff County in Augusta, Arkansas. The institution, Woodruff County Savings & Loan Association ("Woodruff"), was essentially insolvent, and regulators from the FHLBB, the federal agency that regulated savings and loans, were closing it down when McDougal and several other investors, including Stephen Smith, proposed buying the institution and investing additional capital.

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The McDougals also formed a service corporation for the thrift, incorporating Madison Financial Corporation ("Madison Financial"). The new owners changed the name of Woodruff to Madison Guaranty Savings and Loan Association ("Madison Guaranty") to parallel the Madison Bank's name, and opened branches in Bradford and downtown Little Rock, where the thrift moved its principal office.

f. Regulators Criticized McDougal's Banking Practices at Madison Bank & Trust, Including Making Whitewater Loans.

In October 1982, an examination of Madison Bank by the Federal Deposit Insurance Corporation ("FDIC") criticized various aspects of the McDougals' operation, including the $30,000 loan to Whitewater Development. The FDIC said the loan arose from an improper conflict of interest. On October 17, 1982, Jim McDougal told the Madison Bank board: "another $30,000 is owed by a corporation, owned by Bill Clinton, his wife, Susan, and myself. It will be moved within 30 days."[38] The questioned loan was paid off within thirty days by cashier's check, dated November 15, 1982, issued by Madison Guaranty and payable to "Bill Clinton" in the amount of $27,600.[39]

Jim McDougal said the $27,600 was a loan to Governor Clinton to pay off the Whitewater loan at Madison Bank. Jim McDougal said he later discussed this $27,600 loan, and its use, with Governor Clinton.

g. Governor Clinton's Knowledge of McDougal's Conduct.

There is some evidence that Governor Clinton knew or should have known that Jim McDougal was not conducting Madison Guaranty's affairs as required by banking rules and

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[38] Madison Bank & Trust Minutes (Oct. 17, 1982) (Doc. No. 79-00005668).

[39] See Cashier's Check No. 924 from the account of Madison Guaranty signed by John B. Thomas payable to "Bill Clinton" for $27,600 (Nov. 15, 1982) (Doc. Nos. MD-00000001 through 03). Coincidentally, this was just days after Clinton's election to a second term as

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regulations. In April 1983, Governor Clinton appointed Marlin Jackson as the Arkansas Bank Commissioner. Jackson was told there were problems at the Madison Bank. In the fall of 1983, the FDIC and the Arkansas Bank Department jointly issued a cease and desist order to the Madison Bank. The bank was told to discontinue certain practices, including the inordinately high percentage of out of territory loans. One of the criticized loans was the loan to Mrs. Clinton for construction on Lot 13.

Jackson said shortly after the cease and desist order was issued he ran into Governor Clinton at the state Capitol and told the Governor about the order issued to McDougal's bank. Jackson said the Governor told him to do whatever was necessary to do a good job as bank commissioner and not to worry about the politics.[40]

Jackson said he also told Governor Clinton to disassociate himself with the Madison Bank due to the FDIC order.[41] Jackson testified that either in that conversation or one within the next ten or fifteen days Governor Clinton raised a question about either Hillary's or his and Hillary's loan at the bank. Jackson told the Governor that when it came due he had no choice but to move the loan to a different bank. He said to the Governor, "I just think it makes good sense for you [Clinton] to put some distance between yourself and a problem financial institution."[42]

The Madison Bank loan to Mrs. Clinton for construction on Lot 13 was repaid by a $20,800 unsecured loan, dated September 20, 1983, to Governor Clinton from Security Bank of Paragould, which had once been partly owned by then Arkansas Bank Commissioner Marlin Jackson. Jim McDougal said the thrift examiners considered the loan to Hillary Clinton to be an

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Governor.

[40] M. Jackson 9/18/96 GJ at 38-41; M. Jackson 11/9/94 Int. at 3-4.

[41] M. Jackson 11/7/94 Int. at 4.

[42] M. Jackson 9/18/96 GJ at 40-41.

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out of territory loan. McDougal said Marlin Jackson, the Bank Commissioner, called him and said, "Since they've criticized that as being out of territory, we'd better move that loan over to the Bank of Paragould."[43] McDougal said he received a call from Governor Clinton, who said, "Marlin Jackson said they criticized these loans and that I should move my loan over to his bank."[44]

h. Whitewater in the 1980s.

The Whitewater venture was financially unsuccessful. Despite marketing efforts including media promotions, the market for vacation homes in the 1980s was weakened by rising interest rates, a change in the tax code, and a recession. Efforts to develop the properties to make them more attractive -- including the model home on Mrs. Clinton's Lot 13 -- failed to attract buyers. As a result, revenues from Whitewater lot sales could not cover the required loan payments, development costs, and other expenses.

McDougal used several methods to keep the Whitewater loans current. In addition to the loans made either to the corporation directly, or in the names of Hillary Rodham Clinton or Bill Clinton, McDougal caused the corporation's financial obligations to be paid with checks drawn on the Whitewater corporate bank account at Madison Guaranty. On a number of occasions, checks were written when there were not sufficient funds in the account to cover the amounts. McDougal caused Madison Guaranty to honor the checks, and generally, within 7-10 days, he would cause checks to be written on other accounts he controlled at Madison Guaranty to replenish the Whitewater account and pay the overdrafts.

Allegations about this activity were included in the initial RTC Criminal Referral C-0004. Early in his investigation in late November 1993, Justice Department prosecutor

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[43] J. McDougal 4/2/97 GJ at 20-21.

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Mackay observed that the activities described in the referral suggested a pattern of small check "kites" often for McDougal's benefit or for the benefit of those close to him. Though not of particular significance alone, in context Mackay believed it suggested the possibility of a pattern of irregular activity. As detailed in Part A of this Report, Mackay was correct.

i. The End of the Whitewater Partnership.

Sometime in 1986, Mrs. Clinton took over management of the then-quiescent Whitewater Development. In late 1986, Bill Henley delivered certain Whitewater records to the Governor's Mansion at the request of Susan McDougal. On September 5, 1989, Chris Wade wrote Mrs. Clinton and said Whitewater Development needed a president and a secretary to sign a deed to go into the escrow file.[45] Neither Governor nor Mrs. Clinton was then an officer or director.[46] On October 28 and on November 28, 1988, Mrs. Clinton wrote and asked Jim and Susan McDougal for power of attorney on Whitewater.[47] Mrs. Clinton received no response from either McDougal.[48] She continued to manage Whitewater Development, to the limited extent such management was required, until the corporation was dissolved in 1992.

After the 1992 election, the Clintons and transition team members initiated the Clintons' divestment from Whitewater. James Blair, a friend of the Clintons who had helped with the presidential campaign, negotiated the Clintons' sale of their remaining interest. When Blair could not attend the closing, Vince Foster took his place. On December 22, 1992, the Clintons formally severed all economic ties with the Whitewater corporation. McDougal did not have the

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[44] Id. at 21-22.

[45] Letter from Chris V. Wade to Hillary Clinton (Sept. 5, 1989) (Doc. No. DKRT700148).

[46] H. Clinton 5/24/95 RTC Interrog. Resp. at 60-63, 69, 70.

[47] Id. at 61-62. See Senate Special Comm. to Investigate Whitewater Dev. Corp. and Related Matters, Final Report, S. Rep. No. 280, 104th Cong., 2d Sess. 307 (1996).

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necessary $1,000 funds to purchase the stock, so Blair provided the money by writing a check to the trust account of McDougal's attorney, Sam Heuer, who disbursed a check to the Clintons. McDougal did not know that Blair had provided the money, and consequently never repaid Blair, or anyone else.

B. An Introduction to the Activities of Madison Guaranty and its Subsidiaries During the Time McDougal Controlled the Institution.

1. Findings.

The Independent Counsel's investigation of the relationship between McDougal and Madison Guaranty included a general examination of how McDougal operated the institution.

It bears emphasis that McDougal's extensive criminal activity posed significant investigative problems for the successful resolution of the Independent Counsel's investigation. It was evident that McDougal's conduct lay at the core of the criminal activity at Madison Guaranty. It was equally clear, as a matter of investigative practice, that a comprehensive examination of the conduct of President and Mrs. Clinton could not occur without McDougal's full and complete cooperation. The Office's investigation started with a complete examination of the scope and nature of McDougal's conduct, so that the Office could assess that conduct; appropriately seek criminal sanctions commensurate with that conduct; and secure McDougal's cooperation in the Independent Counsel's investigation.[49]

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[48] H. Clinton 5/24/95 RTC Interrog. Resp. at 62.

[49] It was not until after the McDougals' conviction that the Independent Counsel was able to seek their cooperation in the ongoing investigation. Jim and Susan McDougal were in a position to shed light on the involvement or non-involvement of both the President and Mrs. Clinton in the conduct under investigation. Prior to Jim McDougal's cooperation, the Independent Counsel had invested extensive time in the examination of documents and other witnesses and sources to try to answer the core questions about the Clintons. Only the McDougals appeared to possess knowledge of some of the events. They were fifty-fifty partners with the Clintons from 1978 to 1992 in the Whitewater Development venture. They had owned in part and controlled two federally insured financial institutions -- Madison Bank & Trust, and

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About the investigation of the management of Madison Guaranty, the Independent Counsel reports the following findings:

- The FHLBB concluded that Madison Guaranty was insolvent and that Jim McDougal had directed funds to himself and other insiders.

- Madison Guaranty's outside counsel, Borod & Huggins, concluded in March 1987 that the McDougals used Madison Guaranty to benefit themselves and other insiders.

- McDougal used Madison Guaranty and Madison Financial in a manner contrary to federal law and banking regulations as a means of furthering various real estate transactions.

- In 1984, Madison Guaranty was made subject to a supervisory agreement limiting its activity. One ground for those limitations was that Madison Guaranty did not have a sufficiently large net worth.[50]

- To increase its net worth and comply with the supervisory agreement, Madison Guaranty wanted permission to issue preferred stock.

- Initially, the Arkansas Securities Department denied Madison Guaranty permission to issue preferred stock. After Madison Guaranty retained Rose and Hillary Clinton, the Commissioner of the Department authorized the issuance of preferred stock if Madison Guaranty met certain conditions.

2. Evidentiary Summary.

The McDougals bought a controlling interest in Madison Guaranty in 1982. They were ordered removed from the institution's management in July 1986. During the four years that the McDougals controlled Madison Guaranty, the savings and loan suffered from substantial net worth problems, often operated in violation of various banking statutes and regulations, and was

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Madison Guaranty Savings & Loan Association -- both of which made loans to or for the benefit of the Whitewater Development Company. Statements already provided to the Clinton campaign, the media, and to others, made clear that the McDougals disagreed with the Clintons on several issues. In early August 1996, Jim McDougal entered into a cooperation agreement with the Independent Counsel, alleging that some of the President's testimony during the McDougals' trial "was at odds with the truth."

[50] A chart detailing Madison Guaranty's net worth history is contained in Vol. I, Appendix 2.

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used to benefit the McDougals, their family members, and their friends. McDougal quickly "grew" the institution, investing in high risk assets such as acquisitions, development, and construction loans. From January 1982 to December 1983, the institution assets grew from approximately $3.9 million to $16.9 million. By the end of December 1984, Madison Guaranty's assets were reported as $48.6 million, and by the end of March 1985 they were at $67.1 million.

Federal regulations governing the conduct of savings and loans in effect when the McDougals controlled Madison Guaranty required each thrift to maintain a three percent net worth, meaning that assets were required to exceed liabilities by three percent. Because deposits held by savings and loans are insured by the federal government, the failure of any financial institution would be borne by U.S. taxpayers. This regulation was intended to provide a margin of safety for deposits held by savings and loans.

Savings and loans, like all financial institutions, dealt in interest owed and interest owing. Deposits, although money in hand, were considered liabilities: with the promise of interest payments, deposits represented obligations to borrowers to pay more than was received from the depositor. Loans, while payments from the institution to its borrowers, were counted as assets: with the agreement of borrowers to pay interest, loans represented obligations by borrowers to pay more than received from the institution. Also counted as assets were investments in the institution by shareholders and profits that Madison Guaranty's subsidiary service corporation, Madison Financial, would generate by selling real estate for more than it had paid to purchase it.

In 1985, Madison Guaranty's net worth was below the three percent requirement by approximately $3 million. Jim McDougal decided to try and issue a class of preferred stock for $3 million to correct this net worth deficiency.

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a. The McDougals Used Their Institutions for Land Deals.

Throughout his management of Madison Guaranty, McDougal's principal interest was real estate development, and he used both of his financial institutions to benefit his projects. The bank and the savings and loan loaned money to underwrite the up-front investments necessary for surveying, road-building, laying water lines, and making other improvements on the McDougals' real estate projects. Lots sold by Madison Financial were ordinarily sold on credit with the purchasers receiving loans from Madison Guaranty.

Madison Guaranty gave McDougal direct access to a large pool of investment funds. By law, a thrift could allocate or invest up to six percent of its assets to its subsidiary service corporation, which could buy and develop land for residential housing. Under McDougal's control, Madison Guaranty frequently exceeded the six percent limit for its investment in Madison Financial. McDougal also evaded the limit indirectly by permitting Madison Financial to run a continuing overdraft in its Madison Guaranty checking account, an overdraft that at times exceeded $2 million. In effect, these overdrafts were interest-free loans from Madison Guaranty to Madison Financial.

After acquiring Madison Guaranty, McDougal began a number of real estate developments through Madison Financial. One project, known as Maple Creek Farms, was a residential development about ten miles south of Little Rock developed in late 1983. Susan McDougal earned her real estate license and formed Madison Real Estate. This entity then sold the Maple Creek Farms lots. Susan McDougal's brother, Bill Henley, and Pat Harris, an employee of Madison Financial, were salesmen who received substantial commissions for lot sales at Maple Creek.

In the fall of 1983, Madison Financial and Chris Wade (also the broker for Whitewater

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Development) formed a limited partnership called Campobello Development Company. It bought 3,900 acres on Campobello Island in New Brunswick Province, Canada, financed entirely by Madison Guaranty. Wade was replaced as the Campobello project's manager by Little Rock attorney Larry Kuca.

b. Madison Guaranty's Regulatory Problems; 1984 Supervisory Agreement.

By 1984, many of McDougal's real estate ventures had proved unsuccessful. As a result, Madison Guaranty faced significant financial problems. In an examination begun on January 20, 1984, the FHLBB concluded Madison Guaranty had a negative net worth.

In a report to Madison Guaranty's directors dated June 1, 1984, the FHLBB warned "[t]he viability of the institution is jeopardized through the institution's current investment and lending practices in real estate development projects."[51] Failure to comply with the minimum net worth requirement was a very serious matter. Federal regulations provided the FHLBB could issue a supervisory directive upon such a failure. On July 19, 1984, Madison Guaranty's board consented to a supervisory agreement with the FHLBB, pledging to increase Madison Guaranty's net worth to the three percent regulatory net worth requirement, and to take other remedial steps. McDougal, who thought the examiners failed to comprehend his investment strategy, made little effort to comply with the agreement.

c. McDougal's Initial Efforts to Increase Madison Guaranty's Net Worth.

Because McDougal feared another adverse FHLBB examination, he understood that it was critical to boost Madison Guaranty's (apparent) net worth to fend off regulatory restrictions

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[51] FHLBB Office of Examinations and Supervision, Report of Special Limited Examination (as of Jan. 20, 1984) (Doc. Nos. 99000270 through 71); see also Pillsbury Madison Guaranty & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development

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that would effectively remove the McDougals from control of Madison Guaranty and expose their abuses. The first means contemplated by McDougal to increase Madison Guaranty's net worth was to sell preferred stock. Madison Guaranty proposed to sell approximately $3 million worth of such stock to various individuals.

Initially, Madison Guaranty discussed the issuance of stock with its regular counsel, John Selig of the Mitchell Williams law firm. After Madison Guaranty employee Davis Fitzhugh was told by Charles Handley of the Arkansas Securities Department that Madison Guaranty could not issue the stock, McDougal hired Hillary Clinton and Rose to handle the matter.

In April 1985, Mrs. Clinton and Rose began representing Madison Guaranty before the state regulators. Mrs. Clinton and Rose convinced Arkansas Securities Commissioner Beverly Bassett (appointed to that position months earlier by Governor Clinton) that Arkansas law permitted the class of stock to be issued. Mrs. Clinton prevailed. The state thrift regulators, however, required certain net worth requirements on Madison Guaranty before the stock could be issued and gave Madison Guaranty only until the end of 1985 to meet the requirements. Because of these restrictions, the stock offering could not be used to meet the net worth requirement and Jim McDougal eventually decided not to issue the stock. A new real estate opportunity came up and Madison Guaranty abandoned the stock plan entirely to try to improve its net worth through a project that came to be known as Castle Grande.

C. Castle Grande.

1. Findings.

The Independent Counsel examined the Castle Grande real estate transaction, its subsequent resale to insiders at inflated prices, and Mrs. Clinton's role relative to this property.

Company, Inc.: A Preliminary Report to the Resolution Trust Corporation at 8 (Apr. 24, 1995).

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The Independent Counsel reports the following findings about the Castle Grande real estate transaction:

- The FHLBB concluded that Castle Grande land transactions involved fraudulent "land flips" that rendered Madison Guaranty insolvent.

- Borod & Huggins concluded that several individuals, including Seth Ward, may have engaged in criminal violations.

- Seth Ward and Jim McDougal engaged in a fraud designed to purchase property from the Industrial Development Corporation ("IDC") while evading regulatory limitations.

- Ward acted as a straw purchaser of a portion of the IDC property. Although title was in Ward's name and a loan was taken out in Ward's name, he had no other indicia of ownership: Ward was not personally liable for the loan's payment. His compensation for his role in the purchase was to be paid certain "commissions" on future subdivisions of lot sales -- whether he had a hand in the sales or not -- rather than being compensated for the capital gains on the land.

- Webb Hubbell did legal work for Ward on Ward's purchase and subsequent disposition of the Castle Grande property.

- Between the property's date of purchase (October 4, 1985) and the date it was sold (February 28, 1986), Mrs. Clinton billed Madison Guaranty for fourteen conferences with Seth Ward.

- Portions of the property were resold to insiders -- Jim Guy Tucker, Larry Kuca, and Davis Fitzhugh -- at inflated prices. The purchases were financed by loans from Madison Guaranty.

- Rose also performed legal work related to proposed uses of Castle Grande requiring approval from state agencies: 1) an examination of whether a brewery could be constructed at the property, involving the Arkansas Alcohol Beverage Commission; and 2) an examination of whether the utility on the property could sell services outside of Castle Grande, involving the Arkansas Public Service Commission, the Arkansas Pollution Control Commission, and the Arkansas Board of Health.

- Beginning in early March 1986, Madison Guaranty was subject to an extensive examination by federal thrift examiners from the Federal Home Loan Bank Board, which oversaw thrifts.

- To conceal the compensation Ward was paid for his role as strawman, Madison Guaranty created a fictitious record of two "cross loans."

- When federal examiners questioned the propriety and relationship of the two cross loans,

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Madison Guaranty falsely told examiners the two cross loans were unrelated.

- To conceal the relationship between the two cross loans, Ward and Madison Financial used an option agreement. Mrs. Clinton was involved in drafting the option agreement for Madison Financial and Ward.

- The evidence is insufficient to prove beyond a reasonable doubt that Mrs. Clinton knew Madison Guaranty and Seth Ward intended to use the option agreement to deceive regulators when it was drafted.

2. Evidentiary Summary.

Instead of issuing the class of preferred stock, McDougal and others engaged in a series of fraudulent real estate transactions that created the appearance that Madison Guaranty had increased its net worth by approximately $3 million. The transactions involved the purchase of property south of Little Rock, developed under the name Castle Grande, from IDC for $1.75 million. The property came to McDougal's attention after Maple Creek appeared to be a successful project and McDougal wanted to purchase more property north of Maple Creek owned by International Paper.

McDougal eventually bought the IDC property, using Seth Ward as a nominee or "straw purchaser" for a portion of it. This deception enabled Madison Guaranty to avoid state regulations limiting the amount a savings and loan could loan to or invest in a service corporation subsidiary (the maximum amount was 6 percent of assets). As a straw purchaser, Ward was recorded as the owner but had no true ownership interest in his portion of Castle Grande. Ward was compensated with more than $300,000, but Madison Guaranty financed 100 percent of Ward's purchase.

Within five months of Castle Grande's purchase, most of the property, buildings, and utilities were sold at inflated prices, based on inflated appraisals, to Madison Guaranty insiders and affiliates of the McDougals for approximately $4.75 million. Most or all of the price of all

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the purchases was financed by Madison Guaranty loans. These loans increased the assets reflected on the books of Madison Guaranty by approximately $3 million, the amount necessary to meet the net worth requirements.

A number of these insider sales were completed shortly before a scheduled FHLBB examination of the bank. When the examination started, the FHLBB focused on transactions involving insiders, and particularly on Ward's purchase of IDC. Concurrently, Ward demanded payment of his money the parties had disguised in the paperwork as "commissions" for his role in the IDC purchase. To both make the payment to Ward and to conceal Ward's role in the IDC purchase, Ward, Madison Guaranty, and Madison Financial executed the $400,000 "cross loans," paying Ward his commissions while making it look like a loan.

When the thrift examiners went a step further and examined the cross loans, Madison Guaranty falsely told the examiners that the cross loans were unrelated. To prove this, Ward produced a fraudulent option purchase agreement that Mrs. Clinton had assisted him in drafting.

a. The Purchase of the IDC Property.

i. Initial Work on IDC Purchase.

In April 1985, McDougal hired Harry Don Denton, a former Union National Bank official, to be Madison Guaranty's Chief Loan Officer. In mid-1985, one of Denton's close friends and former customers at Union National, Seth Ward, also came to work for McDougal. Ward, a prominent Little Rock businessman, was well known in the business community, and also had a real estate broker's license. Madison Financial employed Ward at an annual salary of $25,000 plus commissions on land sales.

Soon after Ward began work at Madison Financial, McDougal told him that he was interested in purchasing certain property south of Little Rock from the International Paper

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Company (the property would be known as Lorance Heights and a portion of the property was, for a time, owned by Whitewater Development), which was inaccessible. McDougal wanted Ward to help him acquire an access easement to the property before he actually bought it. Ward approached IDC -- the company that owned the adjacent property north of the property McDougal wanted -- and asked whether Madison Financial could acquire an easement. IDC declined to grant an easement, but said it would sell the entire 1,050 acre IDC parcel. The parcel was, for the most part, raw, undeveloped land zoned for industrial use. One unique feature of the land was that it had its own sewer and water utilities that would be included in the sale.

After some negotiations, in July 1985 IDC reduced its asking price to $1.75 million -- essentially the balance due on IDC's mortgage. Ward told McDougal, who agreed Madison Financial would purchase the IDC property at that price. Madison Financial could not cover the entire $1.75 million purchase price. Nor could it secure additional funds from Madison Guaranty -- a state regulation limited the funds that Madison Guaranty could provide to its service corporation to no more than six percent of its assets, and Madison Guaranty was already close to the six percent ceiling.

To evade the six percent limitation, McDougal and Ward agreed Ward would take title to all of the IDC property north of 145th Street and the sewer and water utility. Although the six percent limitation restricted the amount Madison Guaranty could lend its affiliate Madison Financial, there was no limit on the amount Madison Guaranty could lend a private party such as Ward.

A modification in the original agreement to purchase the IDC property, enabled Madison Financial to assign its rights to over half the property covered by the purchase agreement to Ward. Madison Financial did this on September 13, 1985, assigning to Ward all land north of

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145th Street as well as the sewer and water utilities. Ward and his accountant, Michael Schaufele, met with McDougal in late August 1985 to discuss the terms. They eventually agreed Madison Guaranty would loan Ward the entire purchase price on a nonrecourse basis; $400,000 of Ward's purchase was allocated to the purchase of the utilities. Madison Guaranty could not look to Ward personally to pay the loan, the loan was secured only by the property it was used to purchase. Ward would have no personal liability for a deficiency if proceeds from selling the land fell short of the loan.

Ward agreed to grant Madison Financial an option for at least 270 days to purchase the IDC property from him for the amount of the nonrecourse loan plus all accrued interest. In this way, Madison Financial could purchase portions of Ward's property as it needed to sell them to third parties. Madison Financial agreed to reimburse Seth Ward for any additional taxes he may have to pay by virtue of his holding the property. Madison Financial handled all administrative duties associated with the property such as collecting rents. In return for "warehousing" the property for Madison Financial, Ward was to receive commissions on the subsequent sales of the property to third parties -- even if he had nothing to do with arranging the sales.[52] The parties executed a letter memorializing this agreement on September 24, 1985.[53]

ii. The Closing on the IDC Property.

The sale of the IDC property, "probably the largest purchase that Madison Guaranty ever

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[52] Denton 8/20/96 GJ at 33-34; Hubbell 8/22/96 GJ at 82. It is these terms -- under which Ward received significant compensation, but assumed no risk or responsibility -- that have led to Ward being characterized as a "straw" or "nominee" purchaser.

[53] Letter from Seth Ward, Madison Guaranty employee, to Jim McDougal, president Madison Guaranty (Sept. 24, 1985) (Doc. Nos. 396-00000698 through 99). Ward and McDougal later executed a second, backdated agreement dated September 24, 1985, which had some materially different terms.

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made,"[54] closed October 4, 1985. Ward paid a total of $1.15 million for the portion of the property assigned to his name, all of which came from Madison Guaranty on a nonrecourse basis.

b. Sales of Castle Grande Parcels to McDougal Associates.

Following the October 4, 1985 purchase of the IDC property, McDougal sold portions of the property, and began developing plans for the sale of the remaining property. He made a series of quick sales of parcels to Madison Guaranty insiders including the property north of 145th Street, as well as the utility company. Within Madison Guaranty, the property was referred to by some as the "145th Street" property, and by others as "Castle Grande."

In October and November 1985, Madison Financial sold several parcels of property to employees or other Madison Guaranty-related parties. The effect of these insider sales was to inflate falsely the profits of Madison Financial, and thereby help solve Madison Guaranty's net worth problems. Madison Guaranty usually fully financed the sales of the Castle Grande property. Sometimes down payments came from the proceeds of loans or commissions paid by Madison Financial. Because arbitrarily low cost allocations were used in calculating the cost of sales, these transactions generated $1,451,000 of inflated profits that were reported by Madison Financial on its books.

William K. Black, a former FHLBB official, said the acquisition and subsequent resale at inflated values of real estate was a common deception among savings and loans around the country. These purchases, through "straw" borrowers, were:

> [a] means to inflate their net worth once the regulators began to identify them as troubled institutions. The most common means was nominee (also called "straw") loans. A confederate would agree to purchase property . . . at an excessive price. This would allow the S&L to book a substantial profit (which would increase net

[54] Denton 8/20/96 GJ at 35.

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> worth). The S&L insider would frequently benefit personally from such sham sales by having a hidden interest in the loan or receiving various commissions from the transactions. The straws were willing to pay an excessive purchase price because they did not, in economic substance, really pay. The S&L or borrower would find an appraiser who would provide a grossly excessive "market" value for the real estate that would serve as collateral for the loan. The S&L would provide the financing to the straw to make the purchase (providing an additional "profit" to the S&L) and the straw would have no personal recourse on the note . . . . The result is that the straw would have nothing to lose from agreeing to pay an excessive purchase price. These straw transactions, and the resultant accounting entries and reports to the Bank Board were all fraudulent. . . . Castle Grande involved straw transactions.[55]

i. Davis Fitzhugh.

On October 25, 1985, Madison Financial employee Davis Fitzhugh bought the Levi Strauss warehouse building on 145th Street. Madison Financial's accounts said the purchase price for this building was $525,000. Fitzhugh was a salesman for Madison Financial and, in that role, earned a ten percent commission on his sales. He was credited as the salesman on this sale -- to himself -- and paid $50,000 in commissions. To make his "down payment" Fitzhugh signed over his commission check. Madison Guaranty loaned Fitzhugh the remainder of the purchase price on a nonrecourse basis. On Madison Financial's books, the sale to Mr. Fitzhugh resulted in a $439,000 profit. The loan file contained an appraisal for this property valuing it at $1,004,010; Fitzhugh, in an interview in 1986, described this appraisal as "a joke."[56]

ii. Jim Guy Tucker.

Also on October 25, 1985, Jim Guy Tucker bought a thirty-four acre parcel of undeveloped land west of Highway 65 from Madison Financial for $125,000. Only 18.8 acres of this land was usable because the remainder lay in a flood plain. Susan McDougal signed the purchase agreement for Madison Financial, and she was paid $12,500 in commissions for this

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[55] William K. Black, Report to the Independent Counsel on Crimes Arising From the Castle Grande Transactions at 2 (Sept. 4, 1998) [hereinafter "Black Report"].

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sale.[57] Tucker said he never dealt with Susan McDougal on this transaction.

On October 25, Madison Guaranty loaned Tucker $260,000 to purchase this property. The loan was disbursed in two checks that were issued: one to Tucker in the amount of $135,000 and the other to Madison Financial in the amount of $125,000. Madison Guaranty documents claimed the $135,000 loan was to be used for property improvements. Tucker actually used the loan's proceeds to repay a loan for Irene Garner, on which he was guarantor. Madison Financial recognized a paper profit on this sale of $93,620.

iii. Larry Kuca.

On November 20, 1985, Larry Kuca (who worked for McDougal at the Campobello development) bought an undeveloped parcel from Madison Financial for $120,000. Madison Guaranty loaned Kuca $108,000, via a check to Madison Financial. Kuca provided a $12,000 down payment from a $15,000 bonus received from Campobello Properties Ventures. Madison Financial recognized a paper profit of $99,000 on the sale.

iv. Senator Fulbright.

On January 22, 1986, Senator Fulbright bought a large parcel of the Castle Grande property north of 145th Street for $777,600, using a $700,000 loan from Madison Guaranty. Susan McDougal was paid commissions for this sale of $77,760. Madison Financial booked a profit of $16,840 on this sale. This loan was eventually paid in full.

v. Castle Sewer & Water.

Federal regulations prohibited a savings and loan or its subsidiary service corporation from owning a utility. To evade this regulation, the ISC sewer and water utility on the IDC property was bought by Seth Ward as a "straw man." Tucker formed a corporation, called Castle

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[56] Borod & Huggins Report, supra note 18, at 31.

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Sewer & Water ("CSW"), which bought the utility from Madison Financial. Madison Guaranty financed the bulk of the purchase.

On February 28, 1986, the last business day before an FHLBB exam began, Madison Guaranty loaned CSW $1.05 million of the $1.2 million purchase price to buy the sewer and water utility from Madison Financial. The remainder was provided by David Hale through Capital Management Services, Inc. Shortly before this loan, Seth Ward "transferred" his ownership in the sewer and water system to Madison Financial. On February 28, 1986, the ASD approved the transfer of ISC's stock from Seth Ward to Castle Sewer & Water.

Susan McDougal was paid a commission of $85,000 for the utility's sale, although she had nothing to do with the transaction, and McDougal was paid a substantial bonus because of the sale. Susan McDougal later claimed she was actually owed a ten-percent commission, and thus the $85,000 was merely a down payment. She said the remaining $35,000 was "held back" at the request of John Latham to conserve cash.[58] Ward also later claimed a ten percent commission of $120,000 for this sale.

c. The Cross-Loans, the Option, and the Regulators.

In early March 1986, federal examiners from the Federal Home Loan Bank Board ("FHLBB") began examining Madison Guaranty. They immediately focused on sales to insiders. They requested Madison Guaranty to produce copies of all compensation agreements it had with insiders. One of the first aspects of Castle Grande that the examiners looked at was the $1.15 million loan Madison Guaranty provided to Seth Ward for his portion of the purchase price from IDC.

Shortly after the federal examiners arrived at Madison Guaranty, Ward asked to be paid

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[57] Id. at 32.

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his sales commissions for his participation in the Castle Grande acquisition, threatening to sue if he did not receive the promised compensation. Under Ward's agreement with McDougal, Madison Financial owed Ward commissions for the sales of Ward's Castle Grande property, amounting to approximately $300,000. Madison Financial did not have the funds to pay Ward. Madison Guaranty had the available funds, but Madison Financial was the entity that owed Ward the "commissions." With the FHLBB examiners at the institution, Madison Guaranty could not lend the money to Madison Financial -- the loan would violate the six percent limitation on investments by Madison Guaranty in its service corporation.

Ward's threat of suit hit Madison Guaranty officials at the same time they were trying to fend off examiners. Madison Guaranty decided to advance Ward his "commissions" by having Madison Guaranty "loan" him money until Madison Financial could pay him. On March 31, 1986 (the same day an FHLBB examiner asked to see the Seth Ward loan file), Madison Guaranty officials created two loan notes that related to Seth Ward and Madison Financial. The intent was to get cash into Ward's hands and document Madison Financial's obligation to Ward, while concealing Ward's nominee role from the federal examiners.

The first note, dated March 31, 1986, documented a $400,000 loan from Madison Guaranty to Ward. Madison Guaranty funded the loan by issuing on March 31 and April 1, 1986, two checks in the amounts of $300,000 and $100,000 respectively, both made payable to Seth Ward. The bulk of the $400,000 loan -- $300,000 -- was to be Ward's Castle Grande commission. The note was secured by Holman Acres (part of Ward's Castle Grande property), even though under Ward's agreement with McDougal, Madison Guaranty already had an option to purchase Seth Ward's remaining Castle Grande property -- by then only Holman Acres -- for

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[58] Id. at 38.

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the remaining balance of the loan, which was then $70,000.

The second note, also dated March 31, 1986, purported to document a $400,000 loan from Seth Ward to Madison Financial. This loan was never funded by Ward actually providing that amount to Madison Financial, because the purpose was merely to document Madison Financial's obligation to pay Ward commissions. The loan was never listed as a liability or as accrued commissions on Madison Financial's books. If the loan had been recorded on Madison Financial's books, it would have been of interest to the examiners. The note's purpose was to reassure Ward by documenting Madison Financial's obligation to pay him his Castle Grande "commissions." Because the obligation of Madison Financial to Ward was intended to offset exactly the loan Ward received from Madison Guaranty, these two loans were commonly referred to as "cross loans."

On April 7, 1986, the March 31, 1986 cross loans were replaced with new notes. The $400,000 loan note from Ward to Madison Financial was replaced with two separate notes: one for $300,000 and one for $70,943.47. The $300,000 corresponded to the amount of Ward's commissions and the $70,943.47 corresponded to the amount that remained outstanding from Ward's initial purchase of IDC properties plus interest accrued up to April 7, 1986.

Sometime in April 1986, FHLBB examiners discovered a copy of the September 24, 1985 agreement between Ward and McDougal. This agreement had not been produced to the examiners even though it was responsive to their earlier request for all compensation agreements with insiders. The examiners knew about the cross loans to Ward and wanted to determine whether the loans were related to commission payments to Ward. If the $400,000 Ward loan from Madison Guaranty related to commission payments Madison Financial owed to Ward, it would violate the six percent direct investment limitation. In addition, the peculiar

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documentation for this payment of commissions would violate federal regulations that required that Madison Guaranty's records reflect the true nature of its transactions.

FHLBB examiners asked Denton, Madison Guaranty's principal loan officer, about the cross loans. Denton told the FHLBB examiners that the transactions were unrelated; he claimed the $400,000 unfunded promissory note was meant to take the place of an option agreement allowing Madison Financial to purchase from Ward certain real estate for $400,000. Denton told FHLBB examiners that because Ward's attorney was out of town, the option agreement had not yet been completed.

Hillary Clinton assisted Ward in preparing the option agreement that Ward and Denton used to deceive the FHLBB examiners. Mrs. Clinton billed Madison Guaranty for "draft[ing] option agreement" as well as for consulting with Ward and Ward's accountant. The newly drafted option agreement was presented to the FHLBB examiners who later testified the option agreement deceived them as to the true nature of Ward's payments. Although they remained suspicious, they discontinued their investigation.

The promissory note documenting the loan from Madison Guaranty to Ward was eventually destroyed, but Ward kept the promissory note purporting to represent a $400,000 obligation from Madison Financial. After the McDougals were removed from control of Madison Guaranty, and the new management tried to collect other loans from Ward, Ward used the unfunded promissory note as the basis for a suit against Madison Guaranty and Madison Financial.

William Black summarized:

> Subsequent to Ward's purchase, a series of straw "sales" of Castle Grande parcels at grossly excessive prices (financed by Madison Guaranty/Financial) occurred. (Bank Board Report of Examination as of 3/4/86 at 2.5) Each of these straw sales was undertaken for the purpose of fraud, to inflate the reported net worth of

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> Madison Guaranty. Collectively, the straw sales resulted [in] well over a million dollars of inflated "profits," which Madison Guaranty falsely recorded in its books and records, falsely reported to the Bank Board in its periodic quarterly filings, and falsely represented to the Bank Board examiners during the 1986 examination. (The fraudulent Castle Grande "sales" represented the great bulk of Madison Guaranty's purported "profits" during 1985-86 and its entire reported net worth. Bank Board Report of Examination as of 3/4/86 at 2.7-2.8). Each of these straw sales involved violations by the straws, the Madison Guaranty/Financial officials involved in the transactions and reporting (including Ward), and any other individuals (i.e., the appraisers and attorneys involved in the straw sales and the accountants who booked the transactions) who had sufficient knowledge of the transactions to meet the requirements for aiding and abetting the underlying felonies.[59]

d. The FHLBB Examination's Aftermath.

Because of Castle Grande and other transactions, federal examiners determined Madison Guaranty had substantially violated the supervisory agreement and Madison Guaranty insiders had apparently committed numerous improper and potentially criminal acts. By June 1986, it was obvious that McDougal and John Latham, the CEO of Madison Guaranty, had to be removed. On June 19, the FHLBB sent a letter to the Madison Guaranty board of directors. This letter demanded that Madison Guaranty cease and desist from having any transactions with certain named entities, including Castle Sewer & Water, and imposed other interim conditions. This demand led to a meeting of the Madison board of directors with the regulators in Dallas on July 11, 1986.

Prior to the meeting, Beverly Bassett, the Arkansas Savings and Loan Supervisor, sent a memo to Sam Bratton in the Governor's office attaching a copy of the FHLBB letter. Bassett's note said:

> Madison Guaranty is in pretty serious trouble. Because of Bill's relationship w/McDougal, we probably ought to talk about it. The meeting referred to in the attached letter has been moved up to July 11, 1986 and the FHLBB has asked me to be at the meeting.

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[59] Black Report, supra note 55, at 4.

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> Please note that while all of the FHLBB restrictions in the letter are serious, #5 & 6 effectively put Madison Guaranty out of business. "Thank you for your support." [60]

Betsey Wright, the Governor's Chief of Staff, said this issue was discussed with Governor Clinton.[61]

A few days before the meeting with the regulators, the McDougals and Latham met with attorneys from the Mitchell Williams law firm, representing Madison Guaranty in the FHLBB examination. Among other things discussed at this meeting were the excessive commissions paid to Susan McDougal and her brothers. Jim Guy Tucker, who not only was a Madison Guaranty and CMS borrower, but also a member of the Mitchell Williams firm, noted: "[S]ome practices of the service corporation are simply indefensible, especially affiliate transactions. The affiliate transactions will color the regulator's views of the entire situation. It looks like pillage by the family. Ownership and operation by the Association is at risk."[62] At the July 11, 1986 meeting, the FHLBB directed the Madison Guaranty board to immediately remove McDougal and Latham.

The next working day, Monday, July 14, 1986, Betsey Wright wrote the Governor a memo expressing concern about the Governor's relationship with McDougal:

> "White Water stock
> (McDougal's company)
>
> ____
> Do you still have? (Pursuant
> to Jim's current problems

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[60] Memo from Beverly Bassett, Arkansas Securities Department Commissioner, to Sam Bratton, Liaison, Governor's Office (July 2, 1986) (Doc. No. DEK218777).

[61] Wright 2/29/96 GJ at 39-40.

[62] Notes of Conference attended by John Latham, Jim McDougal, Susan McDougal, James B. Speed, Jim Guy Tucker, and John Selig (July 9, 1986) (Doc. Nos. 155-00033554 through 62).

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If so, I'm worried about it[63]

Governor Clinton wrote on the bottom of Wright's memo:

NO -- Don't
have any
more B

On August 15, 1986, the federal examiner's audit culminated in a cease and desist order.

D. The Legal Representation of Madison Guaranty by Hillary Clinton and Rose.

1. Findings.

The Independent Counsel closely examined the nature of Mrs. Clinton's legal work for Madison Guaranty. About Rose's representation of Madison Guaranty the Independent Counsel reports the following findings:

- Madison Guaranty's principal law firm was Mitchell, Williams, Selig, Jackson & Tucker.
- Rose first did work for McDougal when it represented the Bank of Kingston/Madison Bank in the early 1980s. Rose's final bill for services rendered remained unpaid for two years.
- In October 1984, Madison Bank & Trust paid Rose's outstanding bill.
- From 1985 to 1986, Rose performed legal services for Madison Guaranty on regulatory matters before Arkansas state agencies. These included: 1) seeking authorization to issue preferred stock; and 2) seeking to open a limited partnership/broker-dealer.
- Madison Guaranty wanted to issue preferred stock to increase its net worth and satisfy regulators about the institution's financial status.
- Mrs. Clinton was the Rose billing partner on Madison Guaranty matters. She performed work on the matters involving state agencies, and her name appeared in some of the correspondence between Rose and the agencies.

2. Evidentiary Summary.

Mrs. Clinton was hired by Jim McDougal in April 1985. She and Rose represented

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[63] Memo from Betsy Wright to Governor Clinton (July 14, 1986) (Doc. No. 1221-

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Madison Guaranty from April 1985 to July 1986 -- the final fifteen months of the McDougals' management. For all but two of the fifteen months -- through July 1, 1986 -- Madison Guaranty sent Rose a monthly $2,000 retainer check. Mrs. Clinton was the "responsible partner" and the "billing partner." As billing attorney, almost all of Madison Guaranty's retainer checks were addressed to Mrs. Clinton. Much of the legal work Mrs. Clinton did for Madison Guaranty related to matters involving State of Arkansas departments and commissions.

On July 14, 1986, the first business day after the regulators removed Jim McDougal from Madison Guaranty, Mrs. Clinton wrote to McDougal and Latham at Madison Guaranty returning the latest retainer check and fees already advanced but not earned. During the fifteen month period that Rose was on retainer, a number of crimes were committed at Madison Guaranty by McDougal, Ward, and others.

a. The Origin of the Representation of Madison Guaranty by Mrs. Clinton.

The central question this investigation -- and the investigations undertaken by the DOJ Fraud Section and regulatory Independent Counsel Fiske -- had to resolve was whether any violations of the law occurred during the relationship of the President and the First Lady with Madison Guaranty. At some point, Mrs. Clinton and Rose began representing Madison. The question of how that representation came about was an essential component of determining the legality of Mrs. Clinton's conduct. If the representation had, for example, arisen from a favor that McDougal did for the Clintons, that might cast subsequent actions taken by Governor or Mrs. Clinton to help McDougal in a different light.

The OIC's initial investigation of the representation was made much more difficult

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because virtually all of Rose records about the representation were "missing."[64] Only after the production of the Rose/Madison Guaranty billing records by private counsel for the Clintons on January 5, 1996, an extensive hand search of old Bank of Kingston/Madison Bank & Trust records, and the discovery of key documents in Vince Foster's attic in July 1997, was the Independent Counsel able to make a number of determinations.

i. The Dispute as to the Origin of the Representation.

There are conflicting accounts about how Rose came to represent Madison Guaranty in 1985. The explanations of the two principals are in marked conflict:

- Mrs. Clinton said she was the billing partner for the Madison Guaranty matters somewhat by happenstance. She said the business was brought in by a young associate at Rose, Rick Massey, who knew Madison Guaranty's CEO, John Latham. She said Massey asked her to talk to McDougal to arrange the representation and obtain a retainer. Mrs. Clinton said some Rose partners told Massey that he could not do any additional work for McDougal until a bill McDougal owed for previous work was paid.[65]

- In contrast, McDougal said he gave legal business to Rose as a favor to the Clintons. He testified that Governor Clinton came jogging by Madison Guaranty one day in August or September 1984 (shortly after Madison Guaranty had entered a supervisory agreement with the FHLBB), and during a conversation with the Governor, McDougal agreed that he would give some of Madison Guaranty's legal work to Mrs. Clinton. McDougal also said he was interested in having Mrs. Clinton represent Madison Guaranty in its dealings with the state regulatory agencies because he believed that, as the Governor's wife, she would have influence with the state regulators.[66]

Jim McDougal was interviewed at his attorney's office on March 11, 1992, by Clinton campaign staffer Loretta Lynch and Clinton adviser Jim Blair. Blair's contemporaneous notes of

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[64] As discussed more fully in this Report, Mrs. Clinton had ordered a portion of the records destroyed in the late 1980s. In 1992, still more records about Rose's representation of Madison Guaranty were removed from Rose by Webb Hubbell and Vince Foster Jr. and perhaps others. A portion of those records was found, in July 1997, in Vince Foster's attic. Another portion was found in the White House residence in January 1996.

[65] Mrs. Clinton's typewritten statement (prepared in 1992) (Doc. No. DEK1180-00000012).

[66] J. McDougal GJ 4/2/97 at 97-99.

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that meeting reflect that McDougal gave the following account of how the Madison Guaranty legal business was given to Mrs. Clinton:

> He said he remembered explicitly that in 1984 he had a new leather contour chair. Bill C[linton] came jogging by and came in and laid down in the chair and his sweaty body left a permanent stain. He claimed that Bill said they needed money that McD[ougal] needed to give Hillary some legal work -- he said he thought one lawyer could screw up deals as good as another but admitted he was thinking of deeds -- contracts, etc. He said it wasn't two hours later that Hillary came by to set up [a] retainer. He said he and Susan McD[ougal] joked about giving Hillary legal business.[67]

On March 18, 1992 Clinton campaign attorney Loretta Lynch, who went with Blair to Jim McDougal's interview, wrote in a memo to Bill Clinton, Hillary Clinton, Bruce Lindsey, and Jim Lyons:

> Both Jim McD (in Sam Heuer's office to Jim Blair and myself) and Susan McD (in the Post)[68] have recounted that BC came into Jim's office in the summer of 1984; told him the Cs needed $ and asked him to hire HRC. The same day HRC allegedly came by r: a retainer. HRC was then hired in the summer of 1984. Supposedly there were other witnesses. Note that we have heard generally that "people" are talking about this story to a variety of press.[69]

When President Clinton was first questioned about Jim McDougal's account on April 22, 1995, he was asked about the pertinent parts of the Blair memo of the interview of McDougal. When asked if events had happened as McDougal related it, the President replied he did not remember it. When asked what motive McDougal would have for making up a story such as this or if he thought McDougal was lying, President Clinton replied: "[I] am not accusing him [McDougal] of not telling the truth. I do not -- I simply do not remember the conversation he

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[67] Blair handwritten notes at 3-4 (Mar. 11, 1992) (Doc. Nos. DEK004883 through 87).

[68] In March 1992 Susan McDougal was quoted in the Washington Post about the hiring of Hillary Clinton. Her public statements corroborated Jim McDougal's account. Because of Susan McDougal's contemptuous refusal to testify before a federal grand jury, she has never repeated these corroborating statements under oath.

[69] Memo from Loretta Lynch to B[ill] C[linton], H[illary] R[odham] C[linton], Lindsey and Lyons (Mar. 18, 1992) (Doc. No. DEK200967).

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says occurred."[70] The President later testified during the trial of the McDougals and Governor Tucker that he did not remember the meeting with McDougal at Madison Guaranty when it was agreed McDougal would direct some of Madison's legal business to Mrs. Clinton.[71]

During the 1992 presidential campaign, the media asked about Mrs. Clinton's work for Madison Guaranty, and how that representation came about. During the campaign, and later under oath, the First Lady claimed the representation of Madison Guaranty by Rose came about because of an associate named Rick Massey. She stated consistently that she was asked to become involved as "the billing partner" because of her relationship with McDougal, and because McDougal's other institution had never paid the past due bill from Rose, outstanding for prior Rose work for the Madison Bank & Trust. She has testified that "in April 1985" she talked with McDougal because the previous bill was still due and owing.[72]

ii. Rose Representation of the Bank of Kingston/Madison Bank & Trust and the Unpaid Bill for Services.

On August 21, 1980, McDougal signed an agreement to purchase the Bank of Kingston for himself and others. The agreement had a non-compete clause that, for ten years, prohibited McDougal from moving the bank's main office, or opening a branch in Huntsville, Arkansas or within ten miles of Huntsville.

In April 1981, the Madison Bank board voted to amend its charter and petition the Arkansas Bank Department to permit it to move its headquarters to Huntsville in Madison County.[73] This violated the purchase agreement's non-compete clause. Two First National

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[70] W. Clinton 4/22/95 Depo. at 82-83.

[71] W. Clinton 4/28/96 Depo. at 118-22, United States v. McDougal, et al., No- LR-CR-95-173 (E.D. Ark.).

[72] H. Clinton 4/22/95 Depo. at 8-9, 21.

[73] Madison Bank and Trust v. First Nat'l Bank of Huntsville, 276 Ark. 405, 410, 625

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shareholders sued Madison Bank. McDougal asked Rose to handle the litigation. Foster, who was then a Rose partner, represented the bank in the lawsuit. The Chancery Court ruled against Madison Bank. Rose billed Madison Bank approximately $14,000 in December 1981 for the work they had performed for the bank. Rose records showed "Hillary Rodham" was allocated $21.20 in fees for work for the bank.

McDougal spoke with Rose about a possible appeal and was told that it would cost approximately $5,000 plus expenses.[74] Madison Bank appealed its loss to the Arkansas Supreme Court. On June 28, 1982, the Arkansas Supreme Court issued an opinion affirming the Chancery Court's ruling.

On July 30, 1982, the firm sent Madison Bank a bill for the appeal of $5,893.63 -- the $5,000 agreed upon fee, plus $893.63 in expenses. McDougal was dissatisfied with the outcome and refused to pay. He wrote on the envelope "don't pay."

About fourteen months later, on October 10, 1983, Joe Girior, a senior member of Rose, wrote McDougal about the unpaid legal bill from Rose to Madison Bank & Trust. His letter said:

> Pursuant to your discussion with Hillary Rodham Clinton, I am enclosing herewith a copy of our firm statement, dated December 23, 1981, covering services rendered in connection with the matter of the First National Bank of Huntsville v. Madison Bank and Trust.[75]

Again, the bill was not paid.

On September 25, 1984 the board of directors of Madison Bank met. The minutes of that

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S.W.2d 268, 271 (1982).

[74] J. McDougal 4/2/97 GJ at 77; Letter from Vince Foster to James McDougal (Nov. 16, 1981).

[75] Letter from Joe Girior to J. McDougal (Oct. 10, 1983) (Doc. No.174-00033092). He actually enclosed the outstanding bill dated July 30, 1982.

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meeting reflect: "We owe $5,000 for Huntsville move appeal, according to firm. Board discussed the fact that new lawyer sent to argue case. Vaughn moved, McDougal seconded that Bunch [Gary Bunch, bank president] negotiate settlement with Rose. Approved unanimously."[76]

On October 9, 1984, Foster wrote to Bunch, as a follow up to a telephone conversation with Bunch the week before. Foster first said the $5,000 fee limit for the appeal was arranged between McDougal and Giroir, and was to the bank's benefit because the actual fees for the time spent on the matter would have been higher. Foster then responded to some prior criticism of the work done and leveled a threat to file suit:

> You mentioned something about a "girl" lawyer doing the work on appeal. I was assisted on the appeal briefs and abstracting of the record by Carol Arnold, then a 40-year-old trial lawyer, who had already done some of the basic legal research for trial. According to our records, approximately 75% of the attorney time on the appeal was spent by me.
>
> We are totally baffled by the continued delay in the payment of this statement, but are willing to allow you an extension until October 22 in which to satisfy this statement. Otherwise, I am directed by the Firm to file suit.[77]

Madison Bank & Trust paid Rose by check in the amount of $5,000 on October 22, 1984. Bunch said this ended the matter. The minutes of the November 27, 1984 meeting of Madison Bank & Trust's board of directors indicate recognition of a reduction in earnings attributed in part to "a payment of legal fees from 1983 [sic] lawsuit."[78]

When the Clintons' attorney produced Rose billing records on January 5, 1996, all but one page of the documents produced related to Rose's work for Madison Guaranty between 1985 and 1987. This one page was a copy of the first bill from Rose to Madison Bank & Trust in December 1981 in the amount of $13,997.70. On this copy of the bill was the notation "paid

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[76] GJ Exh. 1634; Bunch 1/20/98 GJ at 14-16.

[77] GJ Exh. 1587; Bunch 1/20/98 GJ at 24-26.

[78] GJ Exh. 1635; Bunch 1/20/98 GJ at 17.

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12/31/81."[79] A handwritten note on this copy from Vince Foster said, "HRC, I think there was a subsequent bill."[80] Neither Rose, nor Mrs. Clinton produced a copy of the second bill indicating if and when it was paid.

In late July 1997, Foster's widow produced the contents of a briefcase found in the attic of their Little Rock residence. The only other set of Rose billing records ever found or produced in this investigation was located in the briefcase. The set of billing records produced from the briefcase in Mr. Foster's attic was identical to that earlier produced by Mrs. Clinton with the sole exception of one additional document -- a copy of the second bill, dated July 30, 1982, marked "paid 10/23/84." Foster's briefcase also contained a "Chronology" drafted on Foster's Rose computer. The chronology included, among other entries, the following:

1983	Bank of Kingston final bill written off
10/23/84	$5,000 paid on Bank of Kingston bill.[81]

b. Mrs. Clinton and Rose Lawyers Represented Madison Guaranty before the Arkansas Securities Department in the Issuing of Preferred Stock.

Once retained by McDougal, Rose represented Madison Guaranty in its then on-going efforts to issue preferred stock. McDougal hoped that by issuing the preferred stock, the increase in capital would raise Madison Guaranty's net worth to satisfy federal examiners.

Mrs. Clinton supervised preparation of a Rose opinion letter that concluded state law did permit state-chartered savings and loans to issue preferred stock. On April 29, 1985, before the letter was sent, Mrs. Clinton billed Madison Guaranty one hour for two telephone conferences:

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[79] Rose Law Firm Billing Record (Dec. 21, 1981) (Doc. No. DEK014941).

[80] Id.

[81] Timeline Re: Madison Guaranty Representation (undated) (Doc. Nos. 1180-00000236 through 40).

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one with Rose attorney Richard Massey, an associate who worked on Madison Guaranty matters with Mrs. Clinton, and one with "B. Bassett, Securities Commissioner." "B. Bassett" was Beverly Bassett, whom Governor Clinton had appointed as head of the Arkansas Securities Department ("ASD") less than four months earlier. Mrs. Clinton has testified she called the ASD to find out (for associate Rick Massey) who handled savings and loan matters, and that she cannot remember to whom she spoke or any details of the conversation.[82]

The Rose opinion letter was sent the following day, April 30. It was addressed to Mr. Handley and copied to Bassett. The letter was apparently prepared by Massey, whose initials appear at the bottom of it, although it is "signed" "Rose Law Firm." The letter closed by directing Mr. Handley to contact either Mrs. Clinton or Mr. Massey if he needed further information.

On May 14, 1985, Bassett responded by writing a letter addressed "Dear Hillary," and referred to "your" April 30 letter.[83] Bassett concurred with Rose's conclusion that issuing the preferred stock was "not inconsistent with Arkansas law." Mrs. Clinton then transmitted a copy of this letter to Jim McDougal at Madison Guaranty.

c. Rose Lawyers Represented Madison Guaranty in the Purchase of the IDC Property.

Mrs. Clinton also handled matters related to another effort to boost Madison Guaranty's net worth: the Madison Guaranty development along 145th Street south of Little Rock bought from IDC. Rose's representation of Madison Guaranty in the IDC transaction began in early August 1985; initially the responsible partner was Webb Hubbell, not Mrs. Clinton.

The 1,050 acres were bought by Madison Financial and Seth Ward from the Industrial

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[82] H. Clinton 4/22/95 Depo. at 24-25.

[83] Letter from Beverly Bassett to Hillary Rodham Clinton (May 14, 1985) (Doc. No.

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Development Corporation ("IDC") on October 4, 1985. Ward, who acted as nominee purchaser for McDougal, was the father-in-law of Hubbell, one of Mrs. Clinton's partners at Rose. As discussed above and more fully in this Final Report, aspects of the initial purchase of the property and many of the subsequent sales and transactions were fraudulent and violated federal and state law.

The first Rose billings to the IDC file occurred on August 6, 1985, when Rose attorney Tom Thrash billed the IDC matter for "Review contract for sale." Over the next several weeks, Thrash and another Rose attorney, R. Davis Thomas, billed the IDC matter for numerous telephone conferences with Seth Ward and Darrell Dover (the attorney who represented IDC), as well as drafting documents and attending meetings. The parties exchanged numerous drafts of a purchase agreement, and eventually signed the purchase agreement on September 13, 1985.

One change to the purchase agreement requested by Rose attorneys was to the definition of "Madison Financial Corporation." The original draft prepared by Dover defined the purchasing entity, Madison Financial, as including "any of its affiliates to whom Madison Guaranty [Financial] might elect to assign its rights hereunder."[84] The Rose attorneys, for Madison Financial, requested and received a modification to this language such that Madison Financial under the purchase agreement included "any entity or individual to whom Madison Guaranty [Financial] might elect to assign its rights hereunder," permitting Ward's purchase of a portion of the property.[85]

105-00009361).

[84] Draft Purchase Agreement By And Between Madison Financial and IDC at 1 (undated) (Doc. Nos. 2035-00000071-77).

[85] Draft Purchase Agreement Between Madison Financial and Industrial Development Corp. (Aug. 19, 1985); Hearings Relating to the Investigation of Whitewater Dev. Corp. and Related Matters Before the Senate Special Comm. to Investigate Whitewater Dev. Corp. and Related Matters of the Senate Comm. on Banking, Housing, and Urban Affairs, 104th Cong.

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d. Rose Did Legal Work on Development of the IDC/Castle Grande Property.

McDougal generated a number of ideas for compatible commercial development on the IDC/Castle Grande property. Two of the proposals, to open a brewery and to expand the customer base of the sewer and water utilities, raised issues that required legal analysis by Mrs. Clinton and Rose.

Before selling the water and sewer system, McDougal was interested in expanding the system to serve additional customers, including a business outside Castle Grande, and to residents of his nearby Maple Creek development. McDougal asked Mrs. Clinton to research whether the system could become a public utility. McDougal said he wanted Mrs. Clinton's services because he believed the Governor's wife would have an advantage in dealing with state agencies. In examining the question another Rose attorney, whom Mrs. Clinton supervised, consulted various state agencies.

Rose also examined the legal issues arising from McDougal's plan to place a microbrewery on a two-acre site within the Castle Grande property. Bill Lyon, an acquaintance of McDougal, owned a microbrewery in Little Rock. McDougal hoped to convince Lyon to move his brewery to Castle Grande. Placing a brewery on the site would require the approval of the State Alcohol Beverage Control Board. McDougal's November 20, 1985 memo to Seth Ward said:

> Subject to approval by the ABC, Bill will place his brewery in the shell building, along with a tasting room. I have spoken with the Governor on this matter, and expect it will be approved. We must be very careful to not mention that there will [be] a "tavern" in the location, as word is already out to that effect and it is causing us problems in the area. Bill's operation must be sold both to the state

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259-61 (Jan. 31, 1996) (testimony of T. Thrash) [hereinafter "Senate Whitewater Comm. Hearing"].

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regulators and to the public as a tourist attraction.[86]

McDougal said he hired Mrs. Clinton because he believed she would have influence with state agencies. Mrs. Clinton and other Rose attorneys billed Madison Guaranty for work on this matter. On November 14, 1985, Mrs. Clinton billed Madison Guaranty .5 hour for "Conference with Seth Ward regarding purchase from Brick Lile."[87] On November 20, 1985, Mrs. Clinton billed the IDC matter for one hour for "Conference with Seth Ward; conference with W. Hubbell."[88]

Following the November 20, 1985, memorandum from McDougal to Ward, problems arose with the proposed brewery. The proposed site was located in a "dry" township. McDougal called Mrs. Clinton to research the issue, and -- if the site was located in a "dry" township -- to determine how to petition to make it a "wet" township. McDougal remembered calling Mrs. Clinton to handle this matter because he did not know Hubbell personally and he wanted Mrs. Clinton to work on it because it involved a state agency, believing she would have more influence because she was the Governor's wife.

When the billing records were produced in January 1996, they disclosed Mrs. Clinton had billed Madison Guaranty for conferences, some by telephone, with Seth Ward on fourteen different occasions during the time frame of the IDC/Castle Grande transactions. For example,

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[86] Memo from Jim McDougal, President Madison Guaranty to Seth Ward, Madison Guaranty employee (Nov. 20, 1985) (Doc. No. 105-00050190) (emphasis added).

[87] This entry was actually billed to the "General" matter number, but the reference to the "purchase from Brick Lile" clearly refers to the IDC matter. Rose Billing Records (Jan. 1986) (Doc. Nos. DEK015014 and DEK015016). Brick Lile headed a group of investors who had developed and owned IDC, and it was Lile who had signed on IDC's behalf regarding the purchase.

[88] Rose Billing Records (Jan. 1986) (DEK015014). Around this same time, Ward spoke with McDougal about Ward's efforts to sell an airplane McDougal acquired from Chris Wade in the sale of the remaining Whitewater Development Corporation property. Madison Guaranty phone message logs (Doc. No. 56-00114334); Ward 11/29/94 GJ at 7-29.

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on February 28, 1986 -- the day the fraudulent $825,000 loan to Dean Paul closed and the day that Castle Sewer & Water bought the sewer and water system that Seth Ward had "owned" -- Mrs. Clinton billed Madison: "Seth Ward -- 0.8 hour."[89]

During the examination of Madison Guaranty by federal regulators an "option agreement" for the purchase of Holman Acres was given to the examiners as a purported explanation for some questioned transactions between Seth Ward and Madison. When the billing records were finally produced in January 1996, it was learned for the first time that Mrs. Clinton had prepared this agreement. On May 1, 1986, Mrs. Clinton billed 2.0 hours for speaking with Seth Ward and drafting the option agreement.[90]

The FHLBB examiners who examined Madison Guaranty said the option drafted by Mrs. Clinton, and the backdated agreement, quitclaim deed, and fictitious loan papers created with Hubbell's help, deceived them by concealing the true nature of the relationship between Ward and Madison Guaranty, which violated state and federal regulations.

e. Termination of the Representation.

On July 14, 1986 (the same day that Governor Clinton was told about McDougal's problems by his chief of staff), Mrs. Clinton sent a hand-delivered letter to McDougal and Latham at Madison Guaranty returning the unused portion of Rose retainer. Mrs. Clinton testified later that her letter to McDougal and Latham was unrelated to McDougal having been ousted from the institution on July 11. She also said she did not remember any discussions about Madison Guaranty's serious financial difficulties at that point.

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[89] Rose Law Firm Billing Records (Doc. No. 1180-00000337).

[90] Id.

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E. Madison Guaranty and CMS.

1. Findings.

The Independent Counsel investigated a fraudulent transaction involving a nominee loan to Dean Paul from Madison Guaranty. That loan enabled David Hale and CMS to make a fraudulent loan to Susan McDougal, who used a portion of the loan proceeds to benefit Whitewater Development. The Independent Counsel reports the following findings about Jim McDougal's relationship with CMS and related transactions:

- Jim McDougal, Jim Guy Tucker, and David Hale engaged in a fraudulent scheme to induce the Small Business Administration to provide additional federal funds to Capital Management Services for their own benefit.

- As part of the scheme, Madison Guaranty loaned money to a straw purchaser, Dean Paul. Paul purchased three parcels of property from David Hale at prices based on falsely inflated appraisals. Hale used the profits from these fraudulent sales to provide capital to CMS. The increase in capital was matched three-for-one by the federal government.

- For its part, CMS made nominee loans to Tucker's corporation, Susan McDougal, Stephen Smith, and Larry Kuca. These loans were not used for the purposes specified in the loan application documents.

- Some of Mrs. McDougal's loan proceeds went to benefit the Whitewater Development Company; the McDougals and Clintons then being equal owners of Whitewater Development.

- There was some evidence that Governor Clinton may have known about the loan to Mrs. McDougal. There was insufficient evidence to prove beyond a reasonable doubt that Governor Clinton knew the loan was illegally obtained.

2. Evidentiary Summary.

Jim McDougal, Jim Guy Tucker, and David Hale fraudulently induced the Small Business Administration ("SBA") to provide federal funds to CMS, and then were involved in fraudulently obtained loans from CMS. The scheme was accomplished by Madison Guaranty making an $825,000 loan to a nominee purchaser, Dean Paul. Paul bought three parcels of property from David Hale at prices based on falsely inflated appraisals. Hale used the profits

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from these fraudulent sales to provide capital to CMS. The increase in capital was matched three-for-one by the federal government.

In September 1993, Hale was indicted on felony conspiracy and false statements charges by a federal grand jury in the Eastern District of Arkansas. That same day Hale publicly alleged that President Clinton, Governor Tucker, and others may have benefited from fraudulent loans made by him through CMS and by Jim McDougal through Madison Guaranty. Hale pleaded guilty in March 1994 and agreed to cooperate with the Independent Counsel's ongoing investigation.

CMS made loans in 1986 to individuals or entities designated by Jim McDougal, including Tucker's corporation, Susan McDougal, Stephen Smith, and Larry Kuca. The proceeds from these loans were not used for the purposes specified in the loan application documents. Both Smith and Kuca pleaded guilty to related misdemeanor charges. Some proceeds of the loan to Susan McDougal were used by Whitewater Development as a down payment for property known as Lorance Heights, while another portion was indirectly used to cover an overdraft in the Whitewater Development account at Madison Guaranty.

In May 1996, Jim McDougal, Susan McDougal, and Jim Guy Tucker, then the Governor of Arkansas, were convicted in federal court in Arkansas of various crimes involving Madison Guaranty, and CMS. President Clinton testified as a defense witness by videotaped deposition during the trial. Jim McDougal cooperated with the Independent Counsel following his conviction and provided information contradicting some of President Clinton's trial testimony. Susan McDougal refused to testify before the grand jury, defying a U.S. District Court judge's order. She later was found in civil contempt of court, and incarcerated for eighteen months. Even after a second grant of immunity under 18 U.S.C. § 6002, Susan McDougal refused to

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answer questions before the grand jury. She was indicted on two counts of criminal contempt (18 U.S.C. § 402) and one count of obstruction of justice (18 U.S.C. § 1503). The jury deadlocked on the two criminal contempt counts and acquitted on the one obstruction of justice count; the judge declared a mistrial, and the Independent Counsel declined to retry the case.

a. The Dean Paul Loan.

The centerpiece of the fraud scheme was a loan on February 28, 1986 of $825,000 from Madison Guaranty to nominee purchaser, Dean Paul Ltd. Paul, a business associate of David Hale, borrowed the $825,000 to purchase three pieces of property from Hale. The property's value was inflated through fraudulent appraisals provided to Hale by Robert Palmer. Hale realized a $502,000 "profit" from these sales and invested this profit in CMS. By federal law, this new investment was matched three-for-one with federal funds, substantially increasing the amount of funds available for lending and raising the maximum size of the individual loans CMS could make.

b. Robert Palmer's Role.

Robert Palmer played an integral role in the $825,000 loan scheme. Without the inflated appraisals he provided, the real estate transactions would not have justified the full amount of the loan provided. Palmer was chosen to do the appraisals by William Watt, a Little Rock attorney, who assisted Hale.[91] Watt told Palmer what values were needed and that he should appraise them accordingly. Palmer appraised the first property at $755,000 although he believed the real value to be between $300,000 and $400,000. He appraised the second property at $282,000, its legitimate value. He initially appraised the third property at $275,000, also its legitimate value, but soon appraised it at $720,000 when Watt told him that the value of this property also needed

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[91] Like Hale, Watt also served as a Municipal Judge. Watt was given immunity and

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to be inflated.

c. CMS Loans to McDougal Nominees.

In return for the profits realized from the nominee Madison Guaranty loan to Paul, Hale agreed CMS would make four loans to McDougal's designees. Each of the four loans made by CMS were in violation of the law. In essence, the loan documentation said the loans were intended for a certain purpose, but the proceeds were used for other purposes -- a scheme prohibited by SBA regulations and federal law. The four loans are summarized as follows:

- On January 10, 1986, at McDougal's behest, Hale caused CMS to lend $149,000 to Little Rock attorney and real estate developer Larry Kuca to benefit the silent partnership of McDougal and Kuca. This transaction was fraudulent, and Kuca eventually pleaded guilty for his part in it. Kuca used the loan to repay an advance that he had used to purchase land for himself and McDougal.

- On February 21, 1986, Hale caused CMS to lend $65,000 to Stephen Smith, d/b/a The Communications Company. The funds were used to payoff a loan that Smith, Tucker, and McDougal had used to finance the purchase of land.

- On February 28, 1986, Hale caused CMS to lend $150,000 to Castle Sewer & Water, the corporation controlled by Tucker, which it used as the down payment to purchase the sewer and water system at Castle Grande.

- On April 3, 1986, CMS made a $300,000 loan to Susan McDougal d/b/a/ Master Marketing. Proceeds from this loan were for the McDougals' personal use and the benefit of Whitewater Development.

i. $149,000 Loan to Larry Kuca.

Kuca was a business partner of McDougal. In the fall of 1984, Chris Wade had hired Kuca to work on the Campobello project because of Kuca's expertise in the application and analysis of the Interstate Land Sales Act. Kuca moved to Campobello and became the real estate broker for the project. Kuca learned an adjacent piece of property was for sale. McDougal suggested he and Kuca purchase the property, known as "Seaview," and they agreed McDougal

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testified as a government witness at the trial of Tucker and the McDougals.

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would remain a silent partner in the transaction.

Kuca negotiated a purchase price of $150,000 for the Seaview property. McDougal agreed to provide the financing, but he was strapped for cash. Because of regulatory limitations Madison Financial could not provide any additional funds for the Campobello development, and McDougal, because of regulations governing insider lending, could not borrow $150,000 directly from Madison Guaranty. Nor could Madison Guaranty legally finance an individual's purchase of real estate outside the United States.

To evade these regulatory limitations, McDougal gave Kuca a $150,000 "advance on commissions" to purchase the property. Kuca was owed no more than $80,000 in commissions. Kuca used the "advance" to purchase the Seaview property in his own name. Kuca had several discussions with McDougal about repaying the $150,000 advance. McDougal introduced Kuca to Hale, and Hale agreed to lend Kuca, d/b/a Campobello Realty, enough money for Kuca to pay off the advance on commissions.

On January 10, 1986, Kuca submitted a false loan proposal to CMS. The proposal did not refer to McDougal and Kuca's purchase of the Seaview property. Nor did it disclose that the loan would be used to pay back the advance on commissions. Kuca and McDougal closed the loan at Hale's office and Kuca received a check for $143,000 made payable to Larry E. Kuca d/b/a/ Campobello Realty Company. That same day Kuca used the $143,000 to pay back the "commissions" he was advanced. Kuca received an additional $6,000 in loan proceeds on July 22, 1986. He used that money to pay personal expenses.

ii. $65,000 Loan to Stephen Smith.

Stephen A. Smith served with McDougal on Governor Clinton's staff in 1979 and part of 1980. In 1980, Smith became business partners in various ventures with McDougal and Tucker,

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including the purchase of the Bank of Kingston. In 1980, Smith also invested in a partnership called Kings River Land Company with his father and McDougal and Tucker.

In 1981, Kings River borrowed $165,000 from the Worthen National Bank in Little Rock to purchase thirty-three acres of land in Huntsville, Arkansas. The four investors intended to pay down the note as land was sold and to renew the note until it could be paid off from the sale's proceeds.

By the fall of 1985, the principal owed on the note was reduced to $55,000, but Worthen said it might not renew the note when it came due in January 1986. Because none of the partners had the cash to pay off the note, they wanted to make a suitable refinancing arrangement. To achieve this, McDougal introduced Smith to Hale, and Smith took a loan from CMS. The loan was used to pay off the Kings River note.

McDougal told Smith how to structure the loan application. Smith requested a $65,000 loan for his business, The Communications Company. Smith's loan application was fraudulent in that Smith did not intend to apply the proceeds to the company's operation, as stated in the application. On February 21, 1986, Smith closed the loan at Hale's office, accompanied by McDougal. Both Smith and McDougal each signed a personal guarantee on the loan from CMS. Hale gave Smith a check for $65,000 payable to Smith d/b/a The Communications Company. Smith and McDougal then went to Madison Guaranty and bought a $65,000 cashier's check payable to Worthen Bank, which they used to pay off the remaining principal and interest on the Kings River note.

iii. CMS Loan to Castle Sewer and Water.

Under federal regulations, CMS could not lend money directly for a down payment on real estate. Nor could CMS lend money directly to Tucker because Tucker had already received

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the maximum amount that CMS could lend one person. McDougal recruited his long time friend R.D. Randolph, a contractor who had done work for the McDougals, to be Tucker's "partner." Although Randolph invested nothing, he was given one-third of the shares of Castle Sewer and Water ("CSW"), while Tucker held the other two-thirds. CSW then applied for a loan from CMS. In the loan application, Tucker falsely stated the proceeds would be used for operating capital and to paint a water storage tank.

On February 28, 1986, Hale issued CSW a $150,000 check. Tucker endorsed and deposited the check into a CSW checking account that he controlled. Within ten days, Hale mailed the SBA a required form for this loan, falsely stating that the purpose was working capital. Neither Tucker nor Randolph ever repaid this loan. The loan funds were used by CSW to make the down payment on the purchase of the sewer and water utility property at Castle Grande from Madison Financial.

iv. Susan McDougal's Master Marketing Loan.

The fourth loan to come out of the $825,000 loan scheme was a $300,000 loan CMS made on April 3, 1986 to Susan McDougal d/b/a Master Marketing. This transaction was fraudulent and Jim and Susan McDougal were subsequently convicted for their participation in this scheme.

McDougal brought Hale a report in support of a loan application on behalf of Susan McDougal. Master Marketing requested a loan of $300,000, asserting on the application that it was an advertising and public relations business. There was no "Master Marketing." The report also said Susan McDougal was a well-known Little Rock advertising personality and she was sole owner of this business. The report falsely asserted Master Marketing had been in business since 1983, and that in 1985 it had gross billings of $1,500,000 from several TV, radio, and

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newspaper advertising campaigns for various clients. The report said the loan would be used for working capital to service current and new clients. The report said the loan was needed because Master Marketing had to pay up front fees to media for advertising, thereby causing a cash flow problem while waiting for clients to pay their bills.

Hale knew that the loan would not be used for a Master Marketing advertising business. Every material assertion in the loan application report was false: Although Susan McDougal had done some advertising work for Madison Guaranty, she had done so under the name "Madison Marketing." And McDougal never intended that the proceeds be used for the purposes stated in the loan proposal.

Hale and McDougal both claimed before the loan was actually made, the two of them met with Governor Clinton at McDougal's Castle Grande office on 145th Street, where they discussed a loan to Susan McDougal. Hale and McDougal both said the Governor expressed an interest in the loan and offered property in Marion County he represented as his collateral.[92] President Clinton denied he was present for any such discussion.

On April 3, 1996, Susan McDougal went to Hale's office to sign the necessary loan papers -- including the fraudulent application -- and receive the proceeds. Hale gave Susan McDougal a check for $300,000 payable to Susan H. McDougal d/b/a Master Marketing. The check was deposited into Jim and Susan McDougal's personal checking account at Madison Guaranty. Over the next two months the entire $300,000 was spent, much of it on personal expenses of the McDougals.

But, twenty-five thousand dollars of the $300,000 loan was used for the down payment

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[92] Tr. at 3223, United States v. McDougal, et al., No. LR-CR-95-173 (E.D. Ark.) (testimony of Hale); J. McDougal 4/3/97 GJ at 20-21. Governor Clinton did not personally own land in Marion County, however Whitewater Development Corporation did. Id. at 21-22.

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on the purchase of land south of the Castle Grande property by Whitewater Development (which was then still jointly owned by the Clintons and McDougals). This property became known as Lorance Heights.

Another $25,000 was used to pay off a loan at the Stephens Security Bank that was taken out to pay off the McDougals' various obligations, including an overdraft in a Whitewater account. The origin of that overdraft lay in the $27,600 loan taken out in Bill Clinton's name to benefit Whitewater. The loan taken out in Bill Clinton's name was retired through a nominee loan to Chris Wade and a payment from the James B. McDougal trustee account (with a check signed by Susan McDougal and marked "payoff Clinton").

The Wade nominee loan was then paid off with a Whitewater Development check to Wade's corporation, Ozark Realty Co. The Whitewater Development check used to pay Ozark Realty Co. caused an overdraft in Whitewater Development's account at Madison Guaranty. The overdraft in the Whitewater Development account was later covered with proceeds from a $135,000 loan taken out at Stephens Security Bank. The McDougals used $111,524.21 from the fraudulent Master Marketing loan to pay off the balance on the $135,000 loan taken out at Stephens Security Bank to cover the Whitewater Development overdraft.

d. Concealing the Loans' Fraudulent Nature.

Hale said in May or June 1986, while the examiners were still reviewing Madison Guaranty, McDougal appeared unexpectedly at Hale's office looking, in Hale's words, "visibly upset."[93] McDougal wanted Hale to substitute a new Master Marketing report for the original. Hale refused because the new report was inconsistent with the original, and Hale had already submitted an SBA Form 1031, verifying that the loan conformed to SBA regulations, based on

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[93] Hale 8/2/95 GJ at 27.

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the false assertions in the original loan documents. Moreover, the new report, asserting Master Marketing was a real estate brokerage, said the proceeds would be used to purchase real estate, which was not permitted under SBA regulations. Hale said at some point after funding Susan McDougal's loan, he had a chance encounter with Governor Clinton at a Little Rock shopping mall. Hale said the Governor, referring to Susan McDougal said words to the effect, "Can you believe what that [expletive deleted] Susan did?"[94]

In response to an SBA audit inquiry, Susan McDougal confirmed she owed $300,000 on the Master Marketing loan as of June 30, 1986, and that it was for her advertising business. In April 1987, Susan McDougal wrote to Hale explaining that she would temporarily be unable to make payments on the loan. She falsely asserted fluctuation between payment of media expenses and reimbursement prevented her from paying on the loan for thirty to sixty days. Susan McDougal never made any payments on this loan. She and McDougal did give Hale their Madison Guaranty stock, already encumbered, but Hale got no money from the stock. Hale later entered a consent judgment against Susan McDougal for $300,000, but he never collected. That loan has never been repaid.

F. Concealment of Rose's Work for Madison Guaranty -- Hubbell's Conflict of Interest.

1. Findings.

The Independent Counsel also examined Webb Hubbell's conduct in securing the Federal Deposit Insurance Corporation ("FDIC") and Resolution Trust Corporation ("RTC") as clients. In 1989, Rose was asked to represent the FDIC in a pending lawsuit brought by Madison Guaranty against its former accountants, Frost & Company. In securing the FDIC as a client, Rose and Hubbell failed to disclose Rose's and Mrs. Clinton's prior work for Madison Guaranty

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[94] Id. at 26.

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on Castle Grande; Hubbell's relationship to his father-in-law, Seth Ward, who was potentially liable to Madison Guaranty for his conduct; and Rose's use of a Frost audit while representing Madison Guaranty before the Arkansas Securities Department ("ASD"). The concealment of these facts violated the FDIC and RTC's conflict of interest rules -- had these facts been disclosed it is likely Rose would not have been hired. It is also possible the FDIC might have pursued civil action against Rose for its role in causing losses to Madison Guaranty.

The Independent Counsel reports the following findings about Rose's representation of the FDIC and RTC in the lawsuit against Frost & Company:

- Madison Guaranty sued accountants Frost & Company for malpractice.
- The FDIC hired Rose to represent it when Madison Guaranty went into receivership.
- In securing the representation of Madison Guaranty from the FDIC, Hubbell failed to disclose:
    - Rose's prior work for Madison Guaranty before the Arkansas Securities Department;
    - Rose's and Mrs. Clinton's prior legal representation of work for Madison Guaranty in the Castle Grande transaction;
    - Hubbell's representation of Ward and POM, a Ward corporation;
    - Hubbell's close familial relationship with Seth Ward; and
    - Rose's representation of a Frost partner.
- 1993 press accounts caused the FDIC to investigate whether its conflict of interest rules had been violated
- When later questioned about the nature of his relationship to Ward, Hubbell told the FDIC they were "not particularly close" and that he had "never represented" Ward.
- As part of his work for the FDIC and RTC in the Frost litigation, Hubbell and others reviewed:
    - Mrs. Clinton's and Rose's billing records about the representation of Madison Guaranty in 1985 and 1986;

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- The 1986 FHLBB report describing fraudulent land flips in the Castle Grande transaction; and

- The Borod & Huggins Report describing possible criminal conduct by Ward.

- When subpoenaed during the Frost litigation, former ASD Commissioner Beverly Bassett Schaffer reminded Hubbell of Rose's representation of Madison Guaranty, including Mrs. Clinton's work before the ASD, and suggested it created a conflict of interest.

- When later questioned, Hubbell assured FDIC attorney April Breslaw that Rose's prior Madison Guaranty work had been minimal.

- In late 1993 and early 1994, the FDIC Legal Division spoke directly with Hubbell, who said:

  - He was not aware of Rose's prior Madison Guaranty representation at the time the FDIC hired Rose;

  - He did no legal work for Seth Ward;

  - He did not review the Borod & Huggins report; and

  - Rose's Madison Guaranty representation was limited to lending and collection work.

- As a result of these statements, the FDIC issued a report dismissing the conflict of interest allegation.

- In 1994 at Congress's request, the FDIC-OIG and the RTC-OIG reexamined Rose's alleged conflicts of interest.

- Hubbell told the OIGs that:

  - He did not work on the Castle Grande transaction;

  - He never represented Ward in dealings with Madison Guaranty;

  - He did not review the Borod & Huggins report until "absolutely necessary"; and

  - He had no knowledge of or involvement in Ward's agreements with Jim McDougal and Madison Financial.

- Because substantial evidence had not been produced or provided, the FDIC-OIG and the RTC-OIG gave inaccurate testimony to the United States Congress about the alleged

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Rose conflict.

- In September 1996 the FDIC-OIG issued a Supplemental Report which was more critical of Rose.

- In June 1999, Hubbell pleaded guilty to concealing by scheme a material conflict of interest from the RTC.

2. Evidentiary Summary.

As with all failures of financial institutions, the responsible agencies -- the Federal Deposit Insurance Corporation ("FDIC") and, later, the Resolution Trust Corporation ("RTC") -- examined the operations of Madison Guaranty to determine what went wrong and who was responsible. Typically, when a thrift fails, the federal agencies look at the conduct of all of the professionals who had responsibility for the thrift's operation and whose action (or inaction) might have contributed to the thrift's failure. In this regard, Madison Guaranty was not appreciably different from any other failed savings and loan.

Ultimately, the thrift initiated a lawsuit against Frost & Company ("Frost"), its auditing firm, charging that Frost was negligent in its audit of Madison Guaranty. When Madison Guaranty was put into a conservatorship by federal regulators in 1989, they continued the lawsuit against Frost.

The FDIC (and RTC) hired outside counsel to represent them (and the failed thrift) in the suit. In choosing its lawyers, the FDIC carefully screens potential lawyers and implements certain rules, known as conflict of interest rules. These conflict of interest rules serve two functions. First, broadly and generally, the FDIC only hired law firms that were representing the FDIC on behalf of other failed banks and thrifts. Second, and more particularly, because a law firm's earlier work for a savings and loan that failed was, itself, subject to potential examination, the FDIC would not hire a law firm to represent the failed thrift in a suit against professionals if

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the law firm had itself provided professional services to the thrift that might arguably have contributed to the thrift's failure. As detailed more fully below, when the FDIC hired Rose, Hubbell failed to disclose that Rose had worked for Madison Guaranty.

a. The FDIC Hired Rose to Represent Its Interests and Madison Guaranty in the Frost Litigation.

The directors of Madison Guaranty initiated suit against Frost in 1988. They were represented by the law firm of Gerrish & McCreary (the successor to the firm of Borod & Huggins, which had conducted an internal audit of Madison Guaranty and recommended the suit). When Madison Guaranty failed and was put in receivership, the FDIC took over as the savings and loan's managing agent.

April Breslaw, an FDIC attorney, decided that Gerrish & McCreary had too many conflicts of interest to continue to represent the FDIC in the Frost case. She contacted Rick Donovan at Rose and asked if Rose could take the case. Donovan directed her to Webb Hubbell, who assumed the responsibility to report all actual and potential Rose attorney conflicts of interest to the FDIC and the RTC.

Hubbell circulated a memorandum to Rose's attorneys about conflicts of interest related to Madison Guaranty v. Frost. Hubbell "was aware that Mrs. Clinton had been the billing attorney in 1985 and 1986 . . . [and] that for a period of time, [Rose] had done some work for Madison."[95] Hubbell said Rick Massey "disclosed that there had been prior work done at the Securities Department," either in the fall of 1988 or after Hubbell circulated his March 21, 1989 memorandum.[96] Hubbell did not disclose that information to April Breslaw. Hubbell claimed

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[95] Hearings on the Failure of Madison Guaranty Savings and Loan Association and Related Matters Before the House Comm. on Banking and Financial Services, 104th Cong. 47 (Aug. 10, 1995) (testimony of W. Hubbell) [hereinafter "House Banking Comm. Hearing"].

[96] Id. at 59.

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later that he did not consider the prior Rose work to be a conflict "because we were standing in the shoes of Madison Guaranty in suing its former accountants."[97]

b. Initial Complaints about Rose's Conflicts of Interests -- Hubbell's Relationship with Ward.

In June 1989, approximately three months after the FDIC hired Rose, a "noticeably agitated" Madison Guaranty employee, Sue Strayhorn, told Paul Jeddeloh, Madison Guaranty's intervention attorney, that Hubbell, Seth Ward, and Seth Ward II were in-laws. Jeddeloh told Breslaw. Breslaw then spoke with Hubbell:

> [Hubbell] went to some lengths to make me have the impression that he was not particularly close to his father-in-law and that he was not representing his father-in-law and that he would not represent his father-in-law in the future. I said, please put that in writing. Confirm what you've just said in writing and send me a letter to that effect. And I believe he did that in June of 1989.[98]

Breslaw kept the Frost case at Rose in part based on Hubbell's representation that Ward was not a Rose client.[99]

On June 28, 1989, Hubbell sent a follow-up letter to David Paulson (FDIC's managing agent for Madison), copying April Breslaw and Rick Donovan. The letter read:

Dear Mr. Paulson:

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[97] Id. at 49.

[98] Breslaw 6/6/95 Senate Banking Comm. Depo. at 23; see, e.g., Breslaw 10/23/95 Senate Banking Comm. Depo. at 246-47; Senate Whitewater Comm. Hearing, supra note 85, at 25-26, 41-42 (Nov. 30, 1995) (testimony of A. Breslaw); Breslaw 6/7/94 Int. at 2-3. Note: Citations in this Final Report to page numbers for Senate Banking Committee Depositions are to the page numbers in the original transcript as recorded by the court reporter. These depositions are reprinted in the official bound Committee volumes, which contain both the original court reporter's pagination cited in this Final Report, as well as the pagination for the Committee's bound volume.

[99] Breslaw 10/23/95 Senate Banking Comm. Depo. at 247-48; id. at 249 ("I believe that if I had understood in June of 1989 that Hubbell did represent Ward or Ward's interests, that I would have taken that up with supervisors. And I don't know what they would have advised me to do").

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> At April Breslaw's request, I am writing this letter. This letter is to advise you that I have not represented Mr. Seth Ward in connection with any issue or matter relating to his disputes with Madison Guaranty. It is my understanding that Mr. Ward was represented by Wright, Lindsey & Jennings until recently. When the FDIC became managing agent for the FSLIC as Conservator for Madison Guaranty, Mr. Thomas Ray of the firm Shultz, Ray & Kurrus began representing Mr. Ward. In addition, I do not represent Mr. Seth Ward, II in regard to any disputes he may have with Madison Guaranty. I have no intention of representing Mr. Ward or his son in the future concerning any matter relating to Madison Guaranty.[100]

c. Other Conflicts of Interest Concealed by Hubbell.

In addition to his relationship with Ward, Hubbell also concealed his knowledge of Rose's prior work for McDougal. He gained this knowledge through a review of (among many other sources) the Rose billing records, the internal report created by Borod & Huggins, and discussions with Beverly Bassett Schaffer.

i. Rose Billing Records.

In late 1989 or early 1990, Rose attorney Gary Speed reviewed papers from Frost's Madison Guaranty audits. Speed came across a standard audit response letter to Frost and Company from the Rose Law Firm. Speed learned Rose had performed legal work for Madison Guaranty relating to Frost.

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[100] Letter from Webb Hubbell, Rose attorney, to David Paulson, Madison Guaranty's FDIC Managing Agent (June 28, 1989); see also Hubbell 12/27/95 Telephone Int. at 39 (identifying letter). In her June 1994 sworn statement with the RTC-OIG, Breslaw said:

> I have also been shown a copy of a June 28, 1989 letter from Hubbell to Paulson addressing the issue of representing Ward. This is the letter that Hubbell wrote at my direction. As I look at the letter today, I note that Hubbell limited his comments about not representing or intending to represent Ward to matters involving Madison. I do not recall noting this limitation in 1989.

Breslaw 6/8/94 RTC-OIG Sworn Statement at 10-11; see, e.g., Senate Whitewater Comm. Hearing, supra note 85, at 26 (Nov. 30, 1995) (testimony of A. Breslaw); House Banking Comm. Hearing, supra note 95, at 46 (Aug. 10, 1995) (testimony of A. Breslaw). In her RTC statement Breslaw added, "I am not aware of any representation that Hubbell ever undertook for Seth Ward or Seth Ward II." Breslaw 6/8/94 RTC-OIC Statement at 18 (sworn testimony).

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Speed went to Rose's accounting department and requested copies of the bills Rose had submitted to Madison Guaranty. Speed spoke with Hubbell, lead attorney on the Frost case and primary contact with FDIC, who was knowledgeable about the ethical rules concerning conflicts. Speed asked Hubbell if he knew of Rose's prior work for Madison Guaranty:

> [Hubbell] said he had been aware of some collection work. I showed him the bills I had retrieved concerning the ASD work. He said he would talk about it with April Breslaw. . .
> . . .
>
> Within a day or so, Hubbell told me that he had spoken to Ms. Breslaw about the ASD work and that she agreed it was not a conflict. I recall that conversation clearly. I do not believe that I ever spoke to Ms. Breslaw personally about the matter, and I do not believe I ever wrote anything about the matter.[101]

Breslaw later testified Hubbell did not disclose Rose's work for Madison Guaranty before the ASD, though she added whether this would have disqualified Rose was a closer question than the work for Ward or the IDC/Castle Grande transactions.

Additionally, Seth Ward's loans from Madison Guaranty, including the IDC and Castle Grande loans, were potential evidence of damages in the Frost suit. Rose lawyers prepared exhibits detailing the "bad land deals" causing Madison Guaranty's losses -- including Castle Grande. Hubbell did not disclose the work he had done for Ward on the Castle Grande loans. Hubbell said that as far as Breslaw was concerned, his June 28, 1989 letter put the Ward-Hubbell conflict issue to rest.

ii. The Borod & Huggins Report.

In January 1990, Rose requested a copy of the Borod & Huggins report from the FDIC. Madison Guaranty employee Sue Strayhorn objected to providing Rose a copy of the Borod &

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[101] Speed 6/30/95 RTC-OIG Statement at 5-6; see Speed 5/19/94 GJ at 88 ("Well, at a later time, [Hubbell] came back to me and said, 'I've talked with April Breslaw about these and she says there's no problem . . . that it's just not a problem'").

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Huggins Report because Ward and Hubbell were in-laws. Breslaw spoke with her supervisor, John Beaty, who approved her decision to provide Hubbell with the report. Breslaw understood from her previous discussions with Hubbell that he and Ward were related.

Hubbell initially denied he ever saw the Borod & Huggins Report. Later he claimed his Frost co-counsel initially kept the report from him but that he looked at the report later. Still later Hubbell said perhaps Rose did not request the Report until absolutely necessary. The FBI found Hubbell's latent fingerprints on five pages of the Report, including pages discussing Seth Ward's role in various transactions and possible criminal liability. Hubbell's billing records reflect that he billed 9.10 hours for reviewing the report.

iii. Beverly Bassett Schaffer.

In 1990, Rose decided to subpoena Beverly Bassett Schaffer for testimony. Hubbell telephoned Bassett Schaffer, who:

> asked him if he was not aware of that previous representation [Rose's work for Madison Guaranty] and asked him how it was that he could be representing the government now for -- in a lawsuit accusing Frost & Company of malpractice and negligence covering the very same audits that were supplied to us by the Rose Law Firm in 1985 in support of their effort to get the brokerage firm approved and to show us the financial condition of the institution for purposes of the preferred stock offering. And I just expressed my disapproval that I didn't appreciate him putting the State in that position, involving the State in the lawsuit, after their own law firm, whose partner was the governor's wife who represented Madison before the department and now sought to put the State and my office, me possibly, in a bad light in a civil lawsuit to recover for the government from an accounting firm who is their partner, I mean, essentially worked with them presenting what they did to our office. And I just told him I didn't appreciate it, wasn't going to cooperate. And he -- when I asked him about the previous representation and wasn't it true that he had previously represented -- that their firm had, and he didn't answer. And I said he needed to go talk to Rick Massey, and that they had files and that we had files that clearly showed they had done that.[102]

Bassett was "angry with Webb Hubbell," so she called Frost's lawyer, Peter Kumpe, and

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"told Peter . . . what Webb had done . . . and asked Peter if he was aware that the Rose Law Firm had represented Madison Guaranty before the [Arkansas Securities] department throughout 1985, and that there were documents and files to that effect, numerous documents that would reflect that at the department."[103] There is no evidence that Hubbell told Breslaw or anyone else at the FDIC or the RTC about Beverly Bassett Schaffer's comments to him. Neither Rick Donovan nor Gary Speed learned of her comments to Hubbell about her view of Rose's conflict.

d. Hubbell Concealed His Conflicts When Subsequently Questioned by the FDIC and RTC.

In 1993, the press reported that in representing the FDIC and the RTC in the Frost litigation Hubbell had deliberately concealed Rose's connection to Madison Guaranty. These allegations caused those federal agencies to examine whether Rose had violated their conflict of interest rules. The FDIC Legal Division conducted an examination, and from the statements of then-Associate Attorney General Webb Hubbell, concluded Rose's conduct was proper.

At Congress's request, in 1994-95 the FDIC's Office of Inspector General ("FDIC-OIG") and RTC's Office of Inspector General ("RTC-OIG") further examined Rose's Frost litigation representation. Relying largely on Hubbell's statements to the FDIC-OIG and RTC-OIG, those agencies gave materially incomplete testimony to the United States Congress, particularly about their understanding of Mrs. Clinton's role in the representation of Madison Guaranty, then-believed to be minimal.

It was not until January 1996, when Mrs. Clinton produced copies of Rose's billing records, that the FDIC-OIG and the RTC-OIG understood the more than minimal legal work she did for Madison Guaranty. Subsequently, the FDIC-OIG and RTC-OIG referred Hubbell for

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[102] Bassett Schaffer 11/8/95 GJ at 131-32 (emphasis added).

[103] Id. at 133.

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criminal prosecution for the false statements he had made to those organizations. The Independent Counsel prosecuted Hubbell for concealing Rose's conflicts of interest and connection to Madison Guaranty, and he later pleaded guilty to one felony false statements count.

i. Initial Statements to Breslaw and the FDIC Legal Division.

When the press first raised the issue, Breslaw spoke with Hubbell a day or two later, and she testified:

> [h]e told me that he had not known that others in the Rose Law Firm had represented Madison Guaranty before it failed; that he had not known that in 1989, when I retained him at the Rose firm, to represent the government in the accounting malpractice case. To the best of my current understanding, the representation occurred in 1985 or 1986. So you have this scenario in which the firm does a relatively small volume of work in 1985 or 1986, and then they are retained several years later to represent the government. So it was plausible to me, in the fall of 1993, when I had this conversation with Hubbell that he just had not known in 1989 about the prior representation.[104]

Thereafter, the FDIC Legal Division initiated a review of Rose's work on Frost. Two high-ranking FDIC Legal Division attorneys, Jack Smith and Tom Schulz, directed another Legal Division attorney, John Downing, to review and investigate the matter. Downing began his investigation during November 1993.

On January 11, 1994, Smith and Downing met Hubbell for about forty minutes. Hubbell said, "[a]t the time that Rose was retained he was not aware that they had represented Madison Guaranty before the Arkansas securities commission and so [he] did not disclose [that representation] to FDIC."[105] Hubbell also said Rose did some limited lending and collection work for Madison Guaranty several years before Frost. Hubbell claimed he was not allowed to

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[104] Breslaw 6/6/95 House Banking Comm. Depo. at 37-38. See id. at 145; Breslaw 10/23/95 Senate Banking Comm. Depo. at 69, 76-79, 101-03, 106-09, 118-20, 140-42, 150-57.

[105] Hubbell 1/11/94 FDIC Int. at 1.

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review the Borod & Huggins Report because it involved his father-in-law, Seth Ward. Hubbell admitted attending the trial of Ward v. Madison Guaranty, but said he had no other involvement. Hubbell told Smith and Downing that he had not done legal work for Seth Ward. Downing later testified: "As a matter of fact, I believe Mr. Hubbell told me when we interviewed him that he had not had involvement with Mr. Ward in legal matters."[106] Jack Smith and James Lantelme, another FDIC Legal Division attorney, later testified Hubbell had not told them about the legal work he and Madison Guaranty had done for Seth Ward or about Hubbell's ownership interest in Ward's companies.

Jack Smith spoke with Hubbell again on January 19 and asked Hubbell if he had worked for Seth Ward on the Castle Grande loans, which Hubbell flatly denied. On February 17, 1994, the FDIC Legal Division issued its report, sending Hubbell a copy. Hubbell read the report and faxed a copy to the White House. "The whole report was founded on the fact that [Webster Hubbell] had told the truth," Jack Smith later testified.[107]

ii. The FDIC and RTC Offices of Inspector General Investigations.

The FDIC-OIG and the RTC-OIG investigated Rose from March 1994 to July 1995. The FDIC-OIG interviewed Hubbell after his December 1994 guilty plea. Hubbell claimed he did not do any work on the IDC/Castle Grande matter. He denied purposely hiding from April Breslaw Rose's advocacy for Madison Guaranty before the Arkansas Securities Department. He claimed he never represented Seth Ward in his dealings with Madison Guaranty. He said he did not review the Borod & Huggins Report when Rose first obtained it.

Similarly, Hubbell told the RTC-OIG that he did not see the Ward-Madison Guaranty

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[106] Downing 1/22/98 GJ at 31.

[107] Smith 2/5/98 GJ at 43. See, e.g., D. Jones 1/22/98 GJ at 13.

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dispute as connected to Rose's work for each of them as clients. Hubbell said he did not review the Borod & Huggins Report until it was "absolutely necessary for him to do so because of an issue involving a ROSE attorney, [Patricia Heritage, who] had worked at MADISON GUARANTY."[108] Hubbell said he had no involvement in "preparing any of the agreements between [Seth] WARD and [Jim] MCDOUGAL."[109] Hubbell denied knowledge of or involvement in: (1) the September 23, 1985 draft agreement between Seth Ward and Jim McDougal; (2) the backdated September 24, 1985 agreement between Ward and Madison Financial, and (3) the December 11, 1986 letter from Ward to Madison Financial.[110] The FDIC-OIG issued its report on July 28, 1995. The RTC-OIG issued its report on August 3, 1995. Both reports found that Rose had concealed actual or potential conflicts of interest from the FDIC and RTC, especially in the Frost case.

On August 10, 1995 the House Committee on Banking and Financial Services held a hearing, taking testimony from members of FDIC and RTC OIGs. The witnesses testified about their reports, and about Mrs. Clinton's work for Madison Guaranty. After Congressman Frank Lucas asked RTC-OIG attorney Patricia Black about Castle Grande and Seth Ward's role as a "straw purchaser," the questioning turned to Hillary Clinton's role in the Castle Grande transactions. Black testified the RTC-OIG investigation found "no evidence that [Hillary Clinton] worked on Castle Grande."[111] When asked about Mrs. Clinton's work for Madison Guaranty, Hubbell said he "was not aware of the nature of the matters, but aware that the firm had represented Madison Guaranty in 1985 and 1986 and aware that Mrs. Clinton was the billing

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[108] Hubbell 4/20/95 RTC-OIG Int. at 17.

[109] Id. at 24.

[110] Id.

[111] House Banking Comm. Hearing, supra note 95, at 12 (Aug. 10, 1995) (testimony of

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attorney."[112]

iii. Reopening the Investigation -- Billing Records Discovered In the White House.

After the January 1996 production of Mrs. Clinton's Rose billing records from the White House, the FDIC-OIG (the RTC had since expired by statute) reopened its investigation. On September 20, 1996, the FDIC-OIG issued a Supplemental Report on Rose Law Firm Conflicts of Interest, WA-94-0016:

> [E]ntries in the billing materials and other evidence suggest that former Rose Law Firm partners Hillary Rodham Clinton and Webster L. Hubbell performed work that appears to have facilitated the payment of substantial commissions to Ward, who acted as a straw buyer for Madison Guaranty in the IDC transaction. . . . The method of payment of the commissions evaded regulations designed to protect the safety and soundness of the institution, and violated the integrity of its books and records. Further, Madison Guaranty used a document drafted by Clinton to deceive federal thrift examiners as to the true nature of the payments to Ward.[113]

Patricia Black realized based on the billing records and the 1996 FDIC-OIG investigation that her August 10, 1995, House Banking Committee testimony was wrong.[114] In short, Hubbell's statements to the FDIC and RTC had the effect of deceiving the Offices of Inspector General -- had the billing records never been disclosed his deception would have gone undiscovered.

P. Black).

[112] Id. at 49 (testimony of Hubbell).

[113] FDIC-OIG, Synopsis to Supplemental Report on Rose Law Firm Conflicts of Interest, WA-94-0016 at ii-iii (Sept. 20, 1996).

[114] Black 2/19/98 GJ at 4-7.

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G. Other Evidence about the Knowledge of President Clinton, Mrs. Clinton, and Webb Hubbell.

1. Findings.

Beginning in 1994, Mrs. Clinton and Hubbell were questioned by numerous federal investigations (the FDIC, the RTC, Congress, Independent Counsel Fiske, and Independent Counsel Starr) about their interaction with McDougal. To a large degree, they testified in response to questions that they did not remember the details of work and interactions that happened as much as ten years before the initiation of the inquiries. To assess the credibility of that testimony, the Independent Counsel examined whether more recent intervening events might support the conclusion that the testimony was not truthful. In addition to the Frost lawsuit already discussed, three additional significant events happened in the intervening years that might have refreshed the participants' recollections as to events involving Madison Guaranty: a suit by Seth Ward against Madison Guaranty in 1989-90; the criminal trial of Jim McDougal in 1990; and press inquiries during the 1992 campaign.

The Independent Counsel reports the following findings:

- In 1987, Seth Ward sued Madison Guaranty to collect on the $300,000 unfunded April 7, 1986, promissory note.
- Madison Guaranty counterclaimed that Ward's commissions were fraudulent.
- After Ward's initial victory in the trial court, Hubbell assisted Ward in filing writs of garnishment to collect Ward's judgment.

About McDougal's criminal trial:

- McDougal and the Henley brothers were indicted in 1989.
- McDougal's lawyer, Sam Heuer, warned Hubbell that his father-in-law, Seth Ward, was a critical witness who might have criminal liability for his conduct.
- During trial, Heuer talked with Governor Clinton about closing arguments.

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- McDougal's trial was prominently covered in the press. Following the trial Heuer had lunch with Mrs. Clinton, who also had followed the trial.

About Governor Clinton's 1992 presidential campaign:

- In early 1992, the national news media asked about Governor and Mrs. Clinton's relationship with Jim McDougal, Whitewater Development, and Madison Guaranty.

- Because of the media inquiries, Hubbell and Foster collected and reviewed Rose records relating to Rose's representation of Madison Guaranty, including Mrs. Clinton's billing records.

- Campaign documents, including a draft press statement written by Mrs. Clinton with Hubbell's and Foster's help, asserted:

    - Rick Massey, and not Mrs. Clinton, was the source of Rose's Madison Guaranty business;

    - Mrs. Clinton's involvement with soliciting McDougal started in April 1985 when she asked him to pay past money owed to Rose, which the firm demanded before doing additional work; and

    - Mrs. Clinton did not represent anyone before an Arkansas state agency.

- After reviewing the Rose billing records, Foster created a detailed chronology showing that $5,000 of Madison Guaranty's "old" bill was paid in October 1984.

- During the campaign, Foster and Mrs. Clinton prepared a draft statement about Mrs. Clinton's representation of Madison Guaranty.

2. Evidentiary Summary.

President Clinton, Mrs. Clinton, and Hubbell had three potential motives to minimize their connection to McDougal and Rose's role in the IDC/Castle Grande transactions. First, there was the potential for political embarrassment. Second, there was the potential for legal action by the FDIC and RTC against Rose for malpractice on transactions that had caused substantial losses to the institution and to the taxpayers. Third, there was the possibility of criminal liability resulting from frauds perpetrated by insiders and others associated with Madison Guaranty.

Many events occurred after Mrs. Clinton terminated Madison Guaranty as a client -- any

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number of which might have refreshed the Clintons' recollection. In 1987-88, Ward sued Madison Guaranty on the cross-notes, a fact known to Hubbell and Mrs. Clinton. In 1990, McDougal and two of Susan McDougal's brothers were tried for alleged criminal conduct at Madison Guaranty. Hubbell was notified Ward might be a witness in the case and both Hubbell and Mrs. Clinton followed the trial.

More significantly, in 1992, Mrs. Clinton's work for Madison Guaranty became a campaign issue upon which campaign personnel, Mrs. Clinton, Webb Hubbell, and Vincent Foster devoted significant time and energy. Foster annotated a copy of Rose's Madison Guaranty billing records, writing several notes thereon for Mrs. Clinton. Hubbell reviewed the billing records and discussed with Mrs. Clinton the numerous conferences with Seth Ward.[115] Mrs. Clinton herself may have reviewed the billing records.[116]

a. Ward's Suit against Madison Guaranty.

In 1987, Ward had a $93,000 loan outstanding with Madison Guaranty. To preempt collection efforts, on September 2, 1987, Ward filed suit alleging[117] that Madison Guaranty and Madison Financial owed him "not less than $381,236.06" based on a September 3, 1985 memorandum between Ward and McDougal, a falsely backdated version of the September 24, 1985 agreement, and the $300,000 April 7, 1986 unfunded cross note.

The case was tried before a jury on August 30-31, 1988. Ward prevailed, and the trial court entered a judgment in Ward's favor of $468,306.25, offset by the $93,000 plus interest Ward owed Madison Guaranty, for a total judgment of $353,502.57. Mrs. Clinton learned "at

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[115] Hubbell 12/19/95 GJ at 177-78.

[116] H. Clinton 1/26/96 GJ at 28 (testifying that her fingerprints were on the billing records because she may have looked at them during the 1992 campaign).

[117] Complaint, Ward v. Madison Guaranty, No. 87-7580 (E.D. Ark. Sept. 2, 1987) (Doc. Nos. NE-00000012 through 15).

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some point" that Ward was suing Madison Guaranty "for what he said were commissions."[118]

After the trial court entered the judgment, Ward wanted to collect by filing writs of garnishment against his own relatives and business, seeking an order directing them to pay him money they otherwise owed Madison Guaranty. Webster Hubbell represented the garnishees, his and Seth Ward's relatives and associates.

Though Ward had won judgment, when the RTC took over as receiver of Madison Guaranty his suit was removed to federal court. The Eighth Circuit Court of Appeals eventually held that the RTC could assert defenses previously unavailable when the case was tried before the state trial court, including the defense that "Ward's claim for real estate sales commissions is based on an unrecorded side agreement [the backdated September 24, 1985 agreement] barred by [federal law]. These defenses are available to the RTC as receiver, but were not available to Madison Guaranty or Madison Financial during the state trial."[119] Consequently, Ward's judgment was worthless and he wound up repaying his "commissions." The RTC settled the case on April 30, 1993, and Ward agreed to pay the RTC $325,000.

b. Criminal Charges against McDougal.

On November 20, 1989, a Little Rock grand jury indicted James B. McDougal, Jim Henley, and David Henley for alleged crimes related to the Castle Grande transactions. About three weeks before the criminal trial, Sam Heuer, Jim McDougal's attorney, sent Hubbell a letter warning that Seth Ward "might have some type of criminal exposure under these broad bank fraud violations that the U.S. Attorney's Office seems so happy to use these days."[120] Heuer said

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[118] H. Clinton 4/25/98 Depo. at 102.

[119] Ward v. RTC, 972 F.2d 196, 199 (8th Cir. 1992).

[120] Letter from Sam T. Heuer, attorney for Jim McDougal, to Webster L. Hubbell (May 7, 1990) (Doc. No. 212-00011968).

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he was "in a pretty tight situation on this McDougal case," and that "Seth Ward, who I understand to be your father-in-law, appears to be a pretty critical witness in this case."[121] Heuer asked to interview Ward. Hubbell did not respond.

The McDougal/Henley trial began on May 29, 1990. None of the defendants were convicted. During the summer of 1990, shortly after McDougal's June 1990 acquittal, Hillary Clinton and Webb Hubbell met with Heuer over lunch individually and on separate occasions.[122] Mrs. Clinton was knowledgeable about McDougal's well-publicized trial.[123] Sometime later, Hubbell and possibly Hillary Clinton discussed with Heuer the possibility of Heuer joining Rose.[124]

c. The 1992 Campaign.

i. The Public Arena.

In October 1991, Governor Clinton announced he would run for President in the 1992 election. During the 1992 campaign, Democrats were using the savings and loan crisis to criticize the Bush administration. Democratic National Committee Chairman Ronald H. Brown, for example, called the savings and loan crisis "one of the biggest scandals in the history of our country."[125] The Clinton campaign was concerned when reporters began examining the Clintons' connection to Madison Guaranty and the McDougals. Connections between the Clintons and McDougals became an issue in the Democratic primary[126] when a story by Jeff Gerth was

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[121] Id.

[122] Heuer 5/20/97 GJ at 69-70.

[123] Heuer 10/8/97 GJ at 5-8; Heuer 4/1/97 GJ at 102.

[124] Heuer 4/1/97 GJ at 103 ("Mrs. Clinton and I may have said something about that at lunch also").

[125] Bush role in S&L crisis target of Democrats' probe, Balt. Sun, July 6, 1992, at 3A.

[126] Howard Kurtz & Edward Walsh, Democrats Trade S&L Charges, Wash. Post, Mar. 12, 1992, at A14; Peter Goldman et al., Quest for the Presidency 194 (1994).

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published in the New York Times on March 8, 1992.

Former Senator Paul Tsongas, a Democratic candidate in the 1992 presidential election, criticized Governor Clinton's "S&L caper," and said the Governor, if nominated, would be unable to exploit the savings and loan scandal against President Bush in the fall campaign.[127] The other Democratic candidate, Jerry Brown, charged during a Chicago debate that Governor Clinton had "funnel[ed] money to his wife's law firm for state business," and that Rose had "represent[ed] clients before the state of Arkansas agencies -- his appointees."[128] The Clinton campaign tried to defuse the issue. Campaign representatives denied that Governor Clinton had solicited legal work for Mrs. Clinton from Madison Guaranty, though the Governor had told aides he could not remember either way.[129] Mrs. Clinton told reporters that she had not done any state-related work for Madison Guaranty, although the campaign knew that Rose records reflected her work on the preferred stock matter.[130]

ii. Rose and Mrs. Clinton.

The Clinton campaign, assisted by Vince Foster and Webb Hubbell at Rose, began gathering information on Mrs. Clinton's Madison Guaranty work. On February 12, 1992, the accounting office at Rose printed a copy of the "Client Billing & Payment History" of Hillary Clinton's Madison Guaranty work.[131] Hubbell later admitted he reviewed the Madison Guaranty billing records during the 1992 campaign. He also admitted his campaign review of the billing

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[127] Howard Kurtz & Edward Walsh, Democrats Trade S&L Charges, Wash. Post, Mar. 12, 1992, at A14.

[128] Peter Goldman et al., Quest for the Presidency 194 (1994).

[129] Lynch 2/1/96 GJ at 104.

[130] All Things Considered (NPR radio broadcast) (Mar. 23, 1994).

[131] Rose Law Firm "Client Billing & Payment History" (Feb. 12, 1992) (Doc. Nos. DEK014936 through 40).

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records focused on Mrs. Clinton's numerous conversations with Seth Ward.[132]

When Rose lawyer Rick Massey learned newspaper articles had criticized Rose's representation of Madison Guaranty, he ordered his files on the preferred stock and broker dealer matters from remote storage. His secretary, Vera Hitt, retrieved the files from storage on March 24, 1992. Vince Foster asked Massey for these files. Foster told him he needed the files to prepare a response for the firm. Massey had his files copied for Foster.

On March 26, Massey signed a memorandum about representing Madison Guaranty before the ASD. Massey later testified he believed either Vince Foster or Loretta Lynch prepared the memorandum. The relevant portion read as follows:

> I performed substantially all legal service on behalf of my firm . . . . My work was performed under the supervision of senior members of the Securities Section of this firm. To my knowledge, Ms. Clinton had no contact, either in person, telephonically or otherwise, with any ASD staff member in respect of [these] matter[s]. [That is, the stock offering and the broker/dealer application.] Further, I do not believe that any involvement by her in connection with this matter meaningfully influenced the ASD's ultimate determination with respect to this matter.[133]

Hubbell said he had a conversation with Mrs. Clinton about her representation of Madison Guaranty within a month of the press focus on that issue.[134] He told her the billing records showed she had one conversation with Bassett.[135] Mrs. Clinton responded she did not remember the call, and Hubbell replied, "Well, it's in the bills and Rick does remember that it was in your office."[136]

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[132] Senate Whitewater Comm. Hearing, supra note 85, at 99 (Feb. 7, 1996) (testimony of W. Hubbell).

[133] Memo from Massey at 1-2 (Mar. 26, 1992) (Doc. Nos. 1180-00000233 through 34).

[134] Hubbell 12/19/95 GJ at 177-78.

[135] Id. at 178.

[136] Id.

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By March 26, 1992, Foster prepared a chronology on his firm computer[137] about Rose's representation of Madison Guaranty, beginning with Jim McDougal's April 3, 1981 hiring of the firm to represent the Bank of Kingston and ending with a February 21, 1990 Arkansas Gazette report of John Latham admitting to falsifying records.[138] The chronology was found in Vince Foster's briefcase in his attic in July 1997. The chronology had the following entries:

07/30/82	Final bill of Rose Law Firm to Bank of Kingston (a/k/a Madison Bank & Trust) of $5,000 fees and $893 in costs (contains note in Giroir's hand: "Have Hillary bill with letter to McDougal -- will pay.")
1983	Bank of Kingston final bill written off
10/23/84	$5,000 paid on Bank of Kingston bill
04/85	Latham, as Madison's CEO, hired the Rose Law Firm to request an interpretative ruling of the S&L statutes from the S&L Administrator.[139]

Foster's chronology was significant because of the "computer card" name associated with the document on Rose computers.[140] This document, when discovered on the computers in December 1997, was entitled "Clinton campaign document II."[141] This enabled Rose to de-archive another document entitled, "Clinton campaign document I."[142]

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[137] This document originated on Foster's computer at Rose. Clark 12/2/97 GJ at 136. Clark identified the numbers that appear on the second page, "RLL1860.WP5" as a document number under the firm's new system. Id. He was able to call up the document on their system, which showed the document was created for Foster by his secretary, Lorraine Cline. Id. The additional numbers on second page, "032692," is the date the document was printed, and it changes every time it is printed. Id. at 137. Clark was able to de-archive the document and print it out. Id. at 136-37. His printed version had a date of "120197." Id.

[138] Foster Chronology of the Rose Law Firm Representation of Madison Guaranty Savings & Loan (Mar. 26, 1992) (Doc. Nos. 1180-00000236 through 40).

[139] Id. (Doc. Nos. 1180-00000236 through 37).

[140] Clark 12/2/97 GJ at 137-38.

[141] Id. at 138.

[142] Id. at 138-39; H. Clinton Draft Campaign Statement, LR GJ Exh. 1601 (1992) (Doc.

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The "Clinton campaign document I" from Foster's computer, prepared prior to the March 26, 1992 date of document II, was an edited copy of a draft campaign statement prepared by Mrs. Clinton.[143] The OIC had earlier been provided with a copy of Mrs. Clinton's draft statement containing handwritten changes.[144] Mrs. Clinton testified that the handwriting belonged to Vince Foster.[145] The version on Foster's computer at Rose contained Mrs. Clinton's original statement, amended by the handwritten changes.[146] As modified on Foster's computer, Mrs. Clinton's statement read:

> In April 1985, Massey went to partners in the securities law section for permission to do the work Latham wanted him to do. He was told that the Firm could not do any further work for McDougal or his businesses until the bill owed the Firm for the previous work was paid.
>
> Massey then came to see me because he knew that I knew McDougal . . . . I told him I would talk with McDougal for him and see if McDougal would be willing to pay the past due bill. . . .
>
> On April 23, 1995, I called McDougal and asked if I could drop by to see him at his office. When I visited [McDougal], I told him that I understood Latham wanted Massey to do some work for them. . . . McDougal called Latham into the meeting . . . McDougal told Latham he could proceed with Massey, and he told me that he would arrange to pay the past due bill.
>
> [After discussing this with my partners] Massey and I called McDougal [to tell him a $2,000 retainer was required] but he was not in so we talked with Latham

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Nos. DEK 200962 through 200963).

[143] H. Clinton Draft Campaign Statement, LR GJ Exh. 1601 (1992) (Doc. Nos. DEK 200962 through 200963). Mrs. Clinton said that as best she could recall, her purpose in writing the statement was to put down her memory of what happened when Madison Guaranty was represented by the firm. H. Clinton 1/26/96 GJ at 54. She was unable to identify when, during the campaign, she drafted the document. Id. She does not believe the statement was ever publicly released. Id. at 53-54.

[144] Fax from Diane Blair to Webb Hubbell (Mar. 23, 1992) (Doc. Nos. 118-0000012 through 13).

[145] H. Clinton 4/25/98 Depo. at 29. Mrs. Clinton was unable to say whether she had asked Foster to edit her statement, but said "Vince Foster edited everything." Id. at 29-30.

[146] Clinton Campaign Document I (prepared on Vince Foster's computer) (undated) (MGSL-FR-00000014-17).

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and another employee.

> During the first week or so of Massey's work for Madison Guaranty, [Massey] kept me advised because he wanted me to be generally aware of what he was doing in case he had any trouble being paid for his work.
>
> I recall some uncertainty by Massey about who within the Commissioner's office would handle the issue raised by Madison Guaranty. . . . I have no recollection of ever discussing Madison Guaranty with the Securities Commissioner, although I may have made a procedural inquiry of her or her staff on this issue.
>
> Massey has stated he does not know why he included my name in the letter to the Securities Commissioner, and I do not know either and do not recall ever seeing it before it was sent.
>
> In addition to the matter Massey did for Madison Guaranty, the Firm was requested to handle two other legal matters that were unrelated to the State. The total billed by the Firm to Madison Guaranty for all matters was approximately $21,000.00. . . .
>
> As I have said repeatedly, I did not have any substantive involvement in the work our Firm did for Madison Guaranty that involved the Securities Commissioner. I did not discuss the merits of that matter with the Commissioner or anyone in her office. . . . I can see how in retrospect that to avoid even the appearance of conflict I should not have become involved at all [in helping Rick Massey work out the delicate client engagement problem he encountered]. . . .[147]

The precise nature of Foster's interaction with Mrs. Clinton in drafting this document was never resolved. Contemporaneous evidence establishes that it was a collaborative effort and that Diane Blair (a Clinton friend) and Webb Hubbell were aware of Foster and Mrs. Clinton's work together. On March 23, 1992, Diane Blair faxed five pages (including a cover sheet) to Hubbell, though only the first two pages have been produced to the OIC.[148] The second page has Diane Blair's handwritten note: "Webb -- Vince + Hillary are drafting her answers on law practice.

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[147] Clinton Campaign Document I (prepared on Vince Foster's computer) (undated) (MGSL-FR-00000014-17).

[148] Bill Clinton for President Fax transmission sheet from D. Blair to Webb Hubbell (Mar. 23, 1992) (Doc. No. 852-00001932).

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Ignore marginal notes. D."[149]

H. Removal of Documents from Foster's Office.

1. Findings.

The Independent Counsel's inquiry examined whether any individual obstructed justice by removing documents from the office of Deputy White House Counsel Vince Foster. Foster, a former Rose partner who did some work on Whitewater-related issues during the Clinton Administration's early days, committed suicide on July 20, 1993. Several months after Foster's suicide it was alleged that Whitewater documents might have been in Foster's office at the time of his death, and that White House officials removed those Whitewater documents from Foster's office the night of his death.

The Independent Counsel reports the following findings:

- A precise chronology of all events following Vince Foster's death could not be determined with certainty. Although there were numerous logs and telephone records that showed times of calls and the entry and exit from the White House, many people involved stated they were unable to remember what was said or done, or the reasons for calls or meetings.

About possible perjury, false statements, and obstruction of subsequent investigations:

- Insufficient evidence exists to establish beyond a reasonable doubt that anyone committed perjury, made false statements, or obstructed justice by refusing to furnish subpoenaed records.

About President Clinton and Mrs. Clinton:

- Insufficient evidence exists to prove beyond a reasonable doubt that President Clinton or Mrs. Clinton withheld documents from a lawful grand jury subpoena, gave false testimony or otherwise acted or endeavored to act in a manner intended to obstruct the due administration of justice.

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[149] Handwritten note from D[iane Blair] to Webb [Hubbell] (undated) (Doc. No. 852-00001933).

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2. Evidentiary Summary.

On July 20, 1993, Vince Foster's body was discovered in Fort Marcy Park, Virginia shortly before 6:00 p.m. United States Park Police ("USPP") notified the United States Secret Service ("USSS") of Foster's death at about 8:30 p.m. President Clinton learned of Mr. Foster's death during his appearance on the Larry King Live show. The USPP notified Lisa Foster, Vince Foster's wife, of his death at about 10:00 p.m. President Clinton called Mrs. Clinton who was visiting her mother in Arkansas.

a. Sealing of Foster's Office.

There was a delay of several hours before Foster's office was sealed and access to it restricted. A Secret Service officer was not posted outside Foster's office until 10:20 a.m. on July 21. The Independent Counsel received evidence from Park Police officers who testified that the evening of July 20, they asked David Watkins, White House Director of Administration, to have Foster's office sealed. Watkins testified he did not remember being asked to seal the office, and said he would have complied with the request if asked. The USPP officers' contemporaneous notes do not reflect a request that the office be sealed.

b. Alleged Removal of Documents the Night of July 20.

Because Foster's office was not sealed, other individuals had uncontrolled access to the office the night of July 20. Records establish that: the alarm to the Counsel's suite was disarmed at 10:42 p.m.; subsequently Counsel to the President Bernard Nussbaum entered Foster's office; Patsy Thomasson, a White House employee, arrived at the White House at 10:49 p.m. and also entered Foster's office; and Maggie Williams, Chief of Staff to the First Lady, arrived at the White House at 11:00 p.m. and entered Foster's office. Williams spoke with Mrs. Clinton by telephone both before and after she entered Foster's office.

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David Watkins asked Thomasson to search Foster's office for a suicide note. Nussbaum also testified that he went to Foster's office to look for a suicide note. Williams testified that she went by Foster's office and saw Thomasson. Thomasson, Nussbaum, and Williams each testified that they did not remove anything from the office. By contrast, Secret Service uniformed officer Henry O'Neill said he thought he saw Williams leaving Foster's office with documents that night. Williams denied she had removed any documents from the office and passed a polygraph examination corroborating her denial. In the absence of any index of documents in Foster's office, the Independent Counsel was, ultimately, unable to determine whether any documents were removed the night of July 20.

c. Alleged Removal of Documents the Morning of July 21.

On July 21, 1993, Betsy Pond, Nussbaum's secretary, entered the White House Counsel's suite at 7:01 a.m. and went into Foster's office. Pond said she entered the office to straighten it up. Linda Tripp, then a secretary in the White House Counsel's office, said Pond had told her that she (Pond) was looking for a note in Foster's office. Pond denied saying this to Tripp and passed a polygraph examination corroborating her denial.

Uniformed Secret Service officer Bruce Abbott was on duty on the White House's first floor the morning of July 21. He said he saw Craig Livingstone, Director of Personnel Security, exiting the elevator from one of the upper floors (the White House Counsel's suite is on the second floor) with another person. Abbot testified Livingstone and the other person were carrying boxes and perhaps a briefcase.

Abbott initially said the event happened around 6:45-7:00 a.m. Secret Service logs showed Livingstone did not enter the White House until 8:06 a.m. Abbott later said he could have seen Livingstone as late as 8:30 a.m. Livingstone denied removing any documents from

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Foster's office.

In the absence of any index of documents in Foster's office, the Independent Counsel was, ultimately, unable to determine whether any documents were removed the morning of July 21.

d. DOJ Access to Foster Documents.

A meeting was held the afternoon of July 21 to discuss the investigators' desire to search Foster's office. FBI, USPP, and USSS personnel attended, as well as Nussbaum, Associate Counsels Stephen Neuwirth, and Clifford Sloan, and David Margolis and Roger Adams, two attorneys from the Department of Justice. It was agreed a search would be conducted the next day. Margolis and Adams testified that at the meeting Nussbaum agreed they would be allowed to examine the first page or two of each document in Foster's office to determine whether it was relevant to the investigations.

On July 22, 1993 at 9:56 a.m., Margolis and Adams arrived at the White House to search Foster's office. Nussbaum told Margolis and Adams that he (Nussbaum) would review the documents for privilege and turn over only those that the investigators wanted to see and that were not privileged. Margolis and Adams claimed this was a breach of their agreement. Nussbaum later testified that there was no agreement. The search of Foster's office began at 1:15 p.m. and lasted until 2:49 p.m. Phillip Heymann, Deputy Attorney General, said he understood from Margolis and Adams that there was an agreement with Nussbaum. He also testified he had a conversation with Nussbaum on July 22 when he criticized Nussbaum for breaching the agreement.

Nussbaum and Neuwirth said they had discussed permitting the DOJ attorneys to look at each document but that they had not agreed to that procedure. Nussbaum acknowledged the DOJ

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attorneys asserted there was an agreement and were upset that Nussbaum was "breaching" it. Nussbaum testified he could not remember Heymann being angry with him over a broken agreement.

Because a complete index of the documents in Foster's office was never made, it could not be determined with any certainty what documents in Foster's office were kept from the investigators. Nor could it be determined the extent to which, if at all, Nussbaum -- in limiting the investigators' access to the documents -- impeded their investigation.

Whether Nussbaum breached an agreement was of particular interest in light of a series of phone calls between Mrs. Clinton and others, between the meeting on the 21st and the search on the 22nd. The documentary evidence establishes there were at least six calls and one page between Mrs. Clinton, Susan Thomases, and Maggie Williams, and between Thomases and Nussbaum.

All those involved in the calls denied attempting to influence Nussbaum on whether he would permit a search of Foster's office to proceed. Although the DOJ attorneys' credible testimony and the phone calls' sequence and timing raised the question whether someone had influenced Nussbaum's decision about how the search would be conducted, without a participant to those conversations testifying that such influence occurred, insufficient evidence exists to establish that anyone endeavored to obstruct justice.

e. Removal of Documents by Maggie Williams.

After the search of Foster's office, Maggie Williams came to collect personal files belonging to the Clintons. Williams and Tom Castleton, Special Assistant to the Counsel, carried one or perhaps two boxes of such documents up to the third floor residence of the White House. Williams and Castleton entered the third floor residence at 7:25 p.m. and stayed for

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seven minutes. Carolyn Huber opened a locked closet and put the box or boxes in it. No complete document index was made for documents taken from Foster's office, and the White House was unable to later produce or identify the documents taken to the residence. Whether documents that were relevant to investigations were withheld could not be determined.

f. The Discovery of Foster's "Note."

On July 26, 1993, Stephen Neuwirth was assigned to index the files in Foster's office. He found a note written by Foster, which had been torn into pieces, in an empty briefcase in the office. Neuwirth showed the note to Nussbaum, who soon showed it to Mrs. Clinton. Lisa Foster was later shown the note at 6:00 p.m. on July 27, 1993. After showing the note to Mrs. Foster, Nussbaum telephoned Attorney General Reno and told her about the note found in Foster's briefcase. She told Nussbaum that he had to deliver the torn note to investigators. Nussbaum subsequently delivered the note to the USPP, approximately thirty hours after its initial discovery.

Nussbaum and Neuwirth asserted they delayed notification to the Attorney General to conduct research on whether the note was privileged and to permit Mr. Foster's widow to see the note first. Though this explanation did not appear to justify withholding the fact that the note was found, insufficient evidence exists to establish beyond a reasonable doubt that Neuwirth and Nussbaum's explanations of how the note was missed during the search, but found later, were false.

I. Department of Justice Handling of RTC Referrals.

1. Findings.

The Independent Counsel investigated delays in the handling of RTC Criminal Referral C-0004. The Independent Counsel concluded the evidence was insufficient to prove beyond a

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reasonable doubt that any Department of Justice official obstructed justice by engaging in conduct intended to delay or impede the investigation of the RTC's Criminal Referral C-0004. There were numerous delays in the referral's handling -- in part as a result of attempts to consider the politically sensitive inclusion of a presidential candidate (and subsequently, President) as a witness and in part as a result of the transition to a new administration of a different party. The Independent Counsel concluded the evidence surrounding the delays failed to substantiate that any delays were the result of corrupt intent.

2. Evidentiary Summary.

Madison Guaranty Criminal Referral C-0004 ("C-0004" or the "Referral") arrived at both the FBI Little Rock field office and the U.S. Attorney's Office for the Eastern District of Arkansas ("USAO-EDAR") on September 2, 1992. The referral identified James and Susan McDougal and Lisa Aunspaugh as suspects. Witnesses listed in the referral included Governor Clinton, Hillary Rodham Clinton, Jim Guy Tucker (then the Lieutenant Governor of Arkansas), Stephen A. Smith, and Greg Young. Within a couple of days of the referral's receipt, U.S. Attorney Charles Banks said he did not want any investigative action taken until he had a chance to talk about the referral with FBI management.

The referral lay dormant at USAO-EDAR until after the election. Following President Clinton's election and inauguration, on January 27, 1993, Banks sent a letter to the Executive Office for United States Attorneys ("EOUSA") at the Department of Justice stating that his office had a "conflict of interest" regarding C-0004, and asking that it be recused from the matter and that decisions about its "investigation, indictment, prosecution or declination" be handled by the Department of Justice.

Banks's recusal notice was sent for review to the Criminal Division's Fraud Section,

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where it was assigned to Mark MacDougall, a trial attorney in the Section.[150] MacDougall understood that his assignment was to review C-0004 and furnish an analysis as to whether it merited going forward. MacDougall determined that, although the report provided "substantial factual support for the assertion that Jim and Susan McDougal's conduct may have constituted a breach of fiduciary duty, abuse of position, and self-dealing,"[151] it failed to provide "factual allegations sufficient to establish the elements of any of the criminal statutes used in the prosecution of bank fraud cases."[152] The RTC investigators were not told about this conclusion.

Meanwhile, in Little Rock, the FBI conducted no investigation related to Madison Guaranty until the end of April or early May 1993, when it received an auxiliary office lead in a wire fraud case then being investigated by the FBI in Newark, New Jersey. New information developed in Newark, along with information already in FBI-Little Rock's old Madison Guaranty file, prompted FBI-Little Rock to open a new fraud investigation targeting David Hale (a Little Rock municipal court judge) and Capital Management Services ("CMS"), Hale's Small Business Investment Company ("SBIC"). At roughly the same time, around May 25, 1993, FBI-Little Rock received a referral from the SBA's Inspector General, indicating that audits of CMS raised questions about the handling of delinquent loans at the company.

The Hale inquiry was assigned to Fletcher Jackson, an Assistant United States Attorney in USAO-EDAR. Shortly after Paula Casey was appointed United States Attorney for the Eastern District of Arkansas by President Clinton, she met with Jackson and spoke about a

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[150] MacDougall 2/3/95 Int. at 1.

[151] Memo from Mark J. MacDougall, Trial Attorney, to Gerald E. McDowell, Chief, Fraud Section, Ref. Resolution Trust Corporation Criminal Referral No. C0004, dated August 31, 1992, Naming James B. McDougal, Susan H. McDougal and Lisa Aunspaugh (Feb. 23, 1993) (Doc. No. 004570).

[152] Id.

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number of matters on his docket, including the Hale matter. Casey recalled Jackson described the RTC referral as a "real hot potato," but that it had been closed.[153] Jackson also told her, though, that the ongoing Hale investigation could possibly "reopen that can of worms" (referring to the C-0004 referral) and lead back into the Madison Guaranty matter.[154] On September 23, 1993, Hale was indicted in Little Rock. On that same day, he made public allegations concerning Governor Tucker and President Clinton related to CMS loans.

Later that year, Department of Justice career official Jack Keeney called Casey and urged her to recuse from the Hale matter. Casey said this telephone conversation was the first time she learned the specifics of Hale's allegations about President Clinton. Casey resisted recusal, telling Keeney there was no basis for it.

On October 8, 1993, the RTC in Kansas City sent nine more criminal referrals regarding Madison Guaranty to Casey's attention in Little Rock. While Casey was considering whether to recuse herself from consideration of these matters, Deputy Attorney General Phillip Heymann intervened. On November 3, 1993, he met with Casey and told her that he wanted her to move the Hale and Madison Guaranty matters out of her office because of her relationships with President Clinton and Governor Tucker.

As a result, on either November 4 or 5, 1993, Casey wrote a recusal letter, requesting recusal of herself and her office. She had earlier told the FBI in late September 1993 that she would have to recuse on Madison Guaranty matters because of her relationship with Tucker, Stephen Smith, and Seth Ward. The Department of Justice assigned three Fraud Section trial attorneys to take over the Hale/Madison Guaranty matters -- Donald Mackay, Jim Nixon, and Dwight Bostwick -- who conducted the investigation until the appointment of regulatory

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[153] Casey 6/29/95 GJ at 15; Casey 5/10/95 Int. at 3.

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Independent Counsel Fiske.

J. White House Contacts with Department of Treasury.

1. Findings.

The Independent Counsel investigated whether contacts between White House and Treasury Department officials about the RTC's criminal referrals constituted an effort to obstruct justice by corruptly influencing the handling of the referrals. The Independent Counsel determined the evidence about contacts between Treasury Department officials and White House officials during the review of the RTC criminal referrals concerning Madison Guaranty did not show that any White House official, President Clinton, or Mrs. Clinton, were involved in any effort to obstruct justice in this way.

2. Evidentiary Summary.

In late 1993 and early 1994, a series of discussions occurred between officials at the Treasury Department and the White House regarding nine criminal referrals issued by the RTC, one naming the Clintons as witnesses and one naming a Clinton gubernatorial campaign as a suspect in connection with the failure of Madison Guaranty. When those discussions were later publicly disclosed, they raised the question of whether White House officials had exercised undue influence on the process at the RTC. These concerns were compounded by seemingly inaccurate testimony given to Congress by Deputy Treasury Secretary Roger Altman.

a. Early Contacts -- Fall 1993.

In the early fall of 1993, the RTC issued nine new criminal referrals related to Madison Guaranty. William H. Roelle, the RTC's Senior Vice President and Chief Financial Officer, briefed Jean Hanson, General Counsel of the Department of Treasury, about the referrals.

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[154] Casey 6/29/95 GJ at 15; Casey 5/10/95 Int. at 3.

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Hanson then briefed Deputy Secretary Roger Altman.

Hanson also told the White House about the referrals. On September 29, 1993, following a meeting with other Treasury officials in the office of White House Counsel Bernard Nussbaum, Hanson initiated a private conversation with Nussbaum. Nussbaum said Hanson told him that the RTC was making or had made a number of referrals regarding an Arkansas S&L -- he did not remember the name Madison Guaranty being mentioned. Hanson mentioned one of the referrals was about checks sent to a Clinton gubernatorial campaign and that the Clintons were mentioned in the referrals as possible witnesses.

The evidence indicates that the following events occurred after the initial meeting between Hanson and Nussbaum before the next meeting between Treasury and White House officials on October 14:

- The RTC and Treasury received press inquiries about the referrals, which were then passed to the White House by Hanson and the subject of ongoing discussion between officials at the RTC and Treasury;
- Bruce Lindsey, a longtime friend and advisor to the President and Director of Presidential Personnel, was told about the referrals;
- Lindsey told President Clinton about the referrals (or at least about press inquiries on the referrals);
- President Clinton then had a White House meeting with Governor Tucker, one of the criminal referrals' subjects;[155]
- The referrals were sent to the U.S. Attorney in Little Rock over the criticism of some officials at the RTC; and
- The press inquiries about the referrals resulted in a meeting held at the White House on October 14.

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[155] See Letter from Lloyd Cutler, then Counsel to the President, to Henry Gonzalez, Chairman, House Committee on Banking (July 27, 1994) (Doc. No. 226-DC-00000002) (attaching the President's briefing memo for his meeting with Tucker). The OIC uncovered no evidence that during this meeting the President told Governor Tucker that he was named in the criminal referrals. Both men have denied such a discussion.

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b. Meeting on October 14.

On the afternoon of October 14, 1993, a meeting took place in Nussbaum's office at the White House. The White House officials who attended were Nussbaum, Clifford Sloan, Neil Eggleston, Bruce Lindsey, and Mark Gearan. Present from the Treasury Department were Hanson, Jack DeVore (a press spokesman for Treasury), and Joshua Steiner (an assistant to Altman).

DeVore said the New York Times was working on a Whitewater/Madison Guaranty story and was asking about the referrals and about the endorsements of four checks that were involved in one of the referrals. The reporters also believed the RTC criminal referrals were being stalled in Washington, D.C.

Though Steiner testified the meeting concerned the press inquiries and not the referrals' substance, Bruce Lindsey's notes of the meeting reflect substantive information DeVore passed on from the press's inquiries. An AP reporter asked about checks deposited at the Bank of Cherry Valley, an institution then owned by one of President Clinton's friends. The 1984 Clinton gubernatorial campaign had an account there -- and Jim McDougal at one time took out a loan there to benefit Whitewater. At one point, Lindsey's notes read: "US Atty --> LR --> other cashier's checks --> Jim McDougal/Susan McDougal $300,000."[156] Lindsey also noted Tucker might be indicted.

c. Events Leading to a Meeting at the White House on February 2, 1994.

In November and December 1993, the Whitewater controversy became the focus of increasing scrutiny in the media, Congress, the Department of Justice ("DOJ") and the Clinton Administration itself. Within the Administration two issues received considerable attention: the

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looming statute of limitations deadline for suits that might be filed against the Clintons; and whether Deputy Secretary Altman should recuse himself from substantive review of the RTC's actions.

i. Statute of Limitations.

One topic was the February 28, 1994 deadline for the assertion of civil claims arising out of Madison Guaranty's failure. Senate Republicans were raising the issue whether the RTC would be able to determine by the statute of limitations deadline if civil claims should be filed against the Clintons, and were calling for the RTC to ask for tolling agreements from the Clintons and other possible civil defendants.

On January 25, 1994, Senator Alfonse D'Amato sent a letter to Altman, urging that the RTC seek tolling agreements from all relevant potential defendants in the Madison Guaranty matter. Senator D'Amato also wanted information about how the RTC planned to handle the statute of limitations deadline. The RTC drafted a response to the Senate, saying the RTC would vigorously pursue all appropriate claims arising from the Madison Guaranty matter and would take all necessary steps required by the imminent deadline, including seeking voluntary tolling agreements.

On February 2, 1994, Harold Ickes held a meeting at the White House with Hanson, Altman, Nussbaum, Eggleston, and Maggie Williams in attendance. At the meeting Altman said it was not clear whether the RTC would fully complete its investigation before February 28. Ickes's notes showed Altman presented three options for action before the deadline: reach a conclusion to file a claim for fraud, preserve a claim by filing a protective lawsuit, or obtain a tolling agreement.

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[156] Lindsey handwritten notes (undated) (Doc. No. 008-DC-00000079).

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ii. Recusal.

In early February 1994, public scrutiny led Altman to consider whether he should recuse himself from Madison Guaranty matters at the RTC. Altman discussed his possible recusal with senior Treasury and RTC officials and asked for their advice. Hanson informally told Altman that his friendship with the Clintons did not legally require him to recuse. As a political matter, however, he should do so because he already said he would follow the RTC's recommendation regarding Madison Guaranty, and his failure to step aside would put him in a "no win" position.

In the early afternoon of February 1, 1994, Altman met with Secretary Lloyd Bentsen and Hanson in the Secretary's office. Altman testified he brought up the issue whether he should recuse and asked Bentsen for advice. Altman said Bentsen described recusal as a personal decision, but encouraged him to recuse himself in his own self-interest. Altman recalled Hanson agreed he should recuse. Hanson also testified Altman told the Secretary that he had decided to recuse himself from the Madison Guaranty matter and that Hanson had recommended he recuse.

The next day, at the February 2 meeting, Altman announced he had been advised to recuse himself and that he intended to take that advice. Nussbaum recalled Altman said either that he intended to recuse or that he was considering it. Eggleston and Ickes testified Altman said simply that he was considering the issue.

Whatever the precise wording of Altman's remarks on recusal, his remarks changed the meeting's tone. Almost all participants recalled that at this point Nussbaum's demeanor changed. Altman also recalled Williams conveyed discouragement. Altman testified Nussbaum and Williams then questioned him about the recusal issue and about his replacement.

Altman later testified that as a result of the meeting he considered the recusal issue overnight and decided not to recuse. As grounds for his decision, Altman said 1) he was not

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required to step aside; 2) he would be following RTC General Counsel Ellen Kulka's recommendation; and 3) he did not want the White House taking his recusal personally.

d. A Second Meeting on February 3, 1994.

The next day, February 3, Altman went to the White House and told various officials there that he had decided not to recuse from the Madison Guaranty matter. Altman recalled that on the afternoon of February 3, he called Ickes and said he wanted to briefly see him. Altman went to Williams's office to meet with Ickes and, while standing in the doorway, told him that he would not recuse for the time being. Ickes might have said something to the effect of "good."

e. Congressional Testimony on February 24, 1994.

On February 24, the Senate conducted a hearing at which Altman testified. During his testimony, Altman discussed his contacts with the White House. On three matters, Altman's testimony appeared to be incomplete: first, Altman did not mention the recusal discussion in describing the February 2 meeting; second, he appeared to suggest that only one meeting had taken place between the White House and Treasury, when several meetings had occurred in the fall; and third, he appeared to testify that the February 2 meeting was at the White House's request, when it was initiated by Treasury.

f. Altman's Testimony Was Reviewed.

Beginning February 28, a series of meetings were held at the White House about the accuracy of Altman's February 24 Senate Banking Committee testimony. During that period, each of the following individuals participated in one or more of those meetings: Neil Eggleston, Harold Ickes, Joel Klein, Bruce Lindsey, Bernard Nussbaum, John Podesta, Clifford Sloan and Todd Stern.

The White House's concerns over Altman's testimony boiled down to three issues. First,

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Altman had testified before the Senate that he had requested the February 2 White House meeting with Nussbaum. Nussbaum noted he had merely been asked to come to the February 2 meeting -- in other words, it was not "his" meeting. Second, there was concern that Altman's answers to questions about the number of meetings were inaccurate given the fall contacts. The third item of concern was Altman's failure at the Senate hearings to disclose that he had discussed his possible recusal at the February 2 meeting. The group determined Podesta would call Altman and raise the White House's concerns about his February 24 Senate testimony.

Altman testified that once he found out about the fall meetings, he became concerned about the accuracy of his Senate testimony, and decided to write a letter to Senator Donald Riegle stating that he had just learned about the fall meetings with the White House. The letter, dated March 2, 1994, disclosed the two fall White House meetings. On March 3, 1994, Altman sent a second letter to Senator Riegle. The letter conveyed the following: 1) No non-public information was transmitted to the White House on February 2; 2) Senator D'Amato's staff had already received the same information given to the White House on February 2; and 3) Dennis Foreman, the Treasury Department's designated ethics officer, cleared the February 2 meeting in advance. The letter did not disclose the meeting on February 3, or the fact that recusal was discussed.

On March 11, Altman sent Senator Riegle a third letter, disclosing the February 3 meeting with Ickes. He maintained, however, that: "The purpose of both meetings was to provide notification. At neither meeting did I seek advice, nor was it given."[157] On March 21

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[157] Letter from Roger C. Altman, then Interim CEO of the RTC to the Honorable Donald Riegle (Mar. 11, 1994) (Doc. No. 001-DC-00000489) (emphasis added). Altman and the Treasury Department produced only an unsigned version of this March 11 letter. A signed copy of the final letter appears in the published report of the Senate Banking Committee. The Semiannual Report of the Resolution Trust Corporation Thrift Depositor Protection Oversight

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(the day before his grand jury appearance), Altman sent Senator Riegle a fourth and final letter correcting his testimony:

> I have been continuing an exhaustive review of all my files, phone logs and other information, with the assistance of Counsel. Every contact, regardless of significance, is being reviewed. As you may know, I generally attend meetings in the White House three or more times a day, and am on the telephone with White House staff even more often. It is difficult to recall every brief encounter. But, I would like to add to the record.
>
> In my testimony, I referred to one substantive communication, and, upon further review, that is still my view. The meeting at the White House on February 2 related to procedural issues, which pertain to any RTC claim or case. There was not, and could not have been, any discussion on the substance of the case. I never had any information on it, or any other RTC case.
>
> Before that meeting ended, I also informed those in attendance that I was weighing the issue of recusal. A few days after that meeting, I spoke with McLarty briefly on the telephone with the same message. As you know, on February 25, I decided to recuse myself and did so.
>
> The night before my February 24 testimony, I informed Ickes by phone that I would announce that I was stepping down from the RTC the next morning. That was, indeed, announced on schedule. Also, around the same time, I literally bumped into Nussbaum in a White House corridor. He told me that the Administration would soon be submitting its nominee for permanent RTC head.
>
> I have done my best to recall every communication with White House staff on anything, which could be connected to this matter. I hope that this is helpful.[158]

K. Payments to Webster Hubbell.

1. Findings.

The Independent Counsel investigated whether Webster Hubbell's employment by the President's supporters, following his resignation from the Department of Justice in the midst of the Rose billing fraud matter, constituted a criminal quid pro quo to obstruct this investigation's

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Board -- 1994: Hearing before the Committee on Banking, Housing, and Urban Affairs, 103d Cong., 2d Sess. 338 (1994).

[158] See Letter from Roger C. Altman, then Interim CEO of the RTC to the Honorable Donald Riegle (Mar. 21, 1994) (Doc. Nos. 001-DC-00000496 through 97).

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access to truthful testimony from Hubbell. After leaving the Department on April 8, 1994, Hubbell began working as a consultant. From April through December 1994, fifteen individual clients with relationships to the Clinton Administration or Democratic Party supporters paid Hubbell consulting fees totaling $450,010. He paid little or no taxes on these fees.

About the post-termination employment of Hubbell, the Independent Counsel reports the following findings:

- Before Hubbell's resignation was announced, White House employees and other supporters of the President discussed helping Hubbell find post-resignation employment.

- Chief of Staff Mack McLarty told First Lady Hillary Rodham Clinton that White House employees and others would "be supportive" of Hubbell.

- As a result of the efforts of Mack McLarty, Erskine Bowles, Truman Arnold, Vernon Jordan, and others, Hubbell was hired as a consultant by seventeen individuals and organizations that were Clinton supporters. Hubbell was paid in excess of $500,000 in largely unspecified "consulting fees" during 1994-95. Insufficient evidence exists to prove these payments were intended to affect Hubbell's cooperation with the Independent Counsel.

About Hubbell's cooperation with the Office of the Independent Counsel's ongoing investigation after his December 1994 guilty plea:

- Insufficient evidence exists to establish beyond a reasonable doubt that Hubbell's lack of substantial assistance to the Office of the Independent Counsel's ongoing investigations was a result of, or because of, an effort to influence, impede, or obstruct the due administration of justice or an effort to induce Hubbell to withhold testimony from an official proceeding in violation of federal criminal statutes.

About Mr. and Mrs. Hubbell's tax liability and their attorney's and accountant's role:

- The Hubbells received over $1 million in income from various sources during 1994-97.

- Following the Supreme Court's decision in United States v. Hubbell, 530 U.S. 27 (2000), insufficient admissible evidence existed to prove beyond a reasonable doubt that Hubbell violated federal tax law.

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2. Evidentiary Summary.

In March 1994, under public scrutiny for his billing and expense practices at Rose, Associate Attorney General Webb Hubbell announced his intention to resign. Prior to resigning, Hubbell discussed his intentions with several Clinton confidants, including Mickey Kantor and Jim Blair.

On March 13, 1994, the day before Hubbell said he would resign, there was a meeting at the White House to discuss Whitewater-related matters. Mack McLarty said the meeting's purpose was to discuss an organizational structure to address Whitewater issues with the President and First Lady. After completing the set agenda, the group discussed Hubbell. As McLarty testified:

> [A]nother matter that was topical and pressing in nature was raised at this meeting. And that's how I remember the Webb Hubbell resignation situation or possible resignation being raised at this meeting.[159]

McLarty said as the meeting was breaking up, he told the First Lady:

> "[W]e're going to try to be supportive of Webb." And her response to me, as I remember it, was, "Thank you, Mack. I appreciate that very much."[160]

After the March 13 meeting, McLarty asked Clinton supporters Truman Arnold and Vernon E. Jordan to help Hubbell find clients. Because of their efforts and the efforts of others, Hubbell was hired by at least seventeen other Clinton supporters, earning income of $450,010 during 1994 and $84,750 in 1995.

In some instances, the amount of work Hubbell performed appeared disproportionate to the fees he received, or the client's satisfaction with the work. There was little, if any, direct evidence reflecting Hubbell's efforts and most of Hubbell's clients were unable (or unwilling) to

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[159] McLarty 4/17/97 GJ at 25.

[160] Id. at 35.

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recount work that Hubbell had done on their behalf. Few of Hubbell's clients complained when Hubbell failed to provide them with the work he had contracted for, creating the inference that they did not hire him with the expectation of receiving work. This in turn led to the inference that if they did not hire him to produce actual work -- so that both the putative employer and employee were creating the appearance of employment where no work was expected -- then Hubbell was being paid for some other reason that the parties wished to conceal.

In the Independent Counsel's judgment, however, the evidence is more consistent with a determination by a number of supporters of the President to help Hubbell following his resignation, only to find later, to their dismay, that his conduct was substantially worse than they had been led to believe when they agreed to support him. Their motives for doing so are doubtless as numerous as the number of individuals -- some may well have wished to curry favor with the Clinton Administration, others to help a friend, and still others who wanted a former high level official with influence to lobby on their behalf. In any event, there is insufficient evidence to prove beyond a reasonable doubt that any of the persons providing financial assistance intended to pay Hubbell hush money to buy his silence, or that there was an organized effort by anyone with such criminal intent to get unwitting clients to do so. For this reason, the Independent Counsel declined prosecution of this aspect of the investigation of Hubbell.

L. Investigative Issues -- Delay of and Resistance to the Investigation.

The Madison Guaranty/Whitewater aspect of the Independent Counsel's investigation required a substantial effort and took an extended period of time. In the view of the Independent Counsel, the resistance and recalcitrance of many whose testimony was sought caused a significant portion of this delay. As in the Travel Office investigation, the Independent Counsel's Madison Guaranty/Whitewater investigation experienced delay over its course caused

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by the White House and others, involving both the failure to produce relevant evidence, the refusal of witnesses to testify, and the filing of meritless legal claims that ultimately were rejected by the courts.

1. The Rose Billing Records.

a. The Relation of the Billing Records to Investigations Examining Mrs. Clinton's and Rose's Legal Work for Madison Guaranty.

To investigate the Clintons' relationship with Madison Guaranty, it was necessary to examine how Madison Guaranty retained Rose and Mrs. Clinton to provide legal services, and the services Mrs. Clinton provided. It was known that Mrs. Clinton performed legal work for Madison Guaranty, but exactly what role she played was not known. Her bills to Madison Guaranty were crucial evidence of the time she recorded for Madison Guaranty, and on what specific legal tasks.

In February and March 1992, during Governor Clinton's campaign for President, reporters questioned the Clintons about their investment in Whitewater and about Rose's and Mrs. Clinton's representation of Madison Guaranty. Vince Foster and Webster Hubbell collected Rose files and billing records related to Mrs. Clinton's legal work on behalf of Madison Guaranty to assist the campaign. In September 1993, the RTC discussed in a criminal referral one aspect of Mrs. Clinton's representation of Madison Guaranty. Criminal and civil investigators were interested in determining the relationship of Mrs. Clinton with Madison Guaranty.

i. DOJ Investigation Sought Rose Firm Records.

Prior to the appointment of regulatory Independent Counsel Robert B. Fiske Jr., prosecutors responsible for the Madison Guaranty investigation were interested in Rose's records of its Madison Guaranty representation. DOJ Fraud Section Attorney Donald Mackay's November 26, 1993 Status and Strategy Report planned to "[o]btain information regarding

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whether, and to what extent, the 'Mitchell' and 'Rose' Law Firms of Little Rock performed any legal work on any of the transactions mentioned in the referrals."[161]

Mackay issued the initial grand jury subpoena to Rose's Chief Operating Officer Ronald Clark on January 13, 1994.[162] This subpoena commanded the production of, among other things, all Rose materials relating to Madison Guaranty, Madison Financial, Madison Bank & Trust, President and Mrs. Clinton, Mr. and Mrs. McDougal, Seth Ward, and Whitewater Development. The subpoena was withdrawn later that day, in part due to the President having called for the appointment of an independent counsel.

ii. Regulatory Counsel Fiske Sought the Rose Records.

On February 9, 1994, regulatory Independent Counsel Fiske had the grand jury issue a subpoena to Rose demanding all its records relating to its Madison Guaranty representation.[163] Clark testified that Madison Guaranty billing records could not be found at Rose. Clark explained that Rose was unable to locate any copies whatsoever of the bills or the billing memoranda.[164] No billing records, timesheets, copies of bills, backup billing memoranda, or other indicia of attorneys billing Madison Guaranty for work performed could be found at Rose.

The only case files that Rose found were related to its representation of Madison Guaranty before the Arkansas Securities Commission. At some point, these original files had been taken from Rose, and then returned to Rose in November 1993 by David Kendall, attorney

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[161] Memo from Donald Mackay, Dwight Bostwick and Jim Nixon, Trial Attorneys to G. Allen Carver Jr., Principal Deputy Chief, Fraud Section and John Arterberry, Deputy Chief, Fraud Section at 6-7 (Nov. 26, 1993) (Doc. Nos. GAC000368 through 374).

[162] Grand Jury Subpoena No. 89 (E.D. Ark. Jan. 13, 1994) (issued during the tenure of Dept. of Justice Crim. Div. attorney Donald Mackay).

[163] Grand Jury Subpoena No. 105 (E.D. Ark. Feb. 9, 1994) (issued during tenure of regulatory Independent Counsel Robert Fiske).

[164] Senate Whitewater Comm. Hearing, supra note 85, at 89-90 (Jan. 18, 1996)

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for the Clintons.[165] No copies of any billing statements were in the files Kendall returned to Rose.[166]

Regulatory Independent Counsel Fiske also issued grand jury subpoenas to President and Mrs. Clinton demanding documents referring or relating to Madison Guaranty and Rose:

- Subpoena No. 319, issued on May 24, 1994 to William Jefferson Clinton with a production date of June 28, 1994;[167] and
- Subpoena No. 320, issued on May 24, 1994 to Hillary Rodham Clinton with a production date of June 28, 1994.[168]

Independent Counsel Starr later issued an additional subpoena to the Rose Law Firm for these same records.[169] The RTC and FDIC had sought these files and billing records during criminal and civil investigations they had performed.

iii. The RTC through Pillsbury Madison Also Was Investigating Rose's Madison Guaranty Work.

On February 9, 1994, the RTC subpoenaed Rose for all of their records and files relating to Madison Guaranty.[170] On February 24, 1994, the RTC retained Pillsbury Madison & Sutro ("Pillsbury Madison") as outside counsel to investigate Madison Guaranty. The RTC directed Pillsbury Madison to investigate legal services Rose performed for Madison Guaranty.

(testimony of R. Clark).

[165] R. Clark 12/5/95 GJ at 16.

[166] R. Clark 11/19/97 GJ at 31.

[167] Grand Jury Subpoena No. 319 (E.D. Ark. May 24, 1994) (issued during tenure of regulatory Independent Counsel Robert Fiske).

[168] Grand Jury Subpoena No. 320 (E.D. Ark. May 24, 1994) (issued during tenure of regulatory Independent Counsel Robert Fiske). Independent Counsel Kenneth Starr later issued one additional subpoena to Carolyn Huber calling for production of the billing records. Grand Jury Subpoena No. 814 (E.D. Ark. Jan. 30, 1995).

[169] Grand Jury Subpoena No. 1171 (E.D. Ark. Nov. 28, 1995).

[170] Pillsbury Madison & Sutro LLP, A Report on the Representation of Madison Guaranty Savings & Loan by the Rose Law Firm: Prepared for Resolution Trust Corporation

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iv. FDIC and RTC Inspector General Investigations.

When the FDIC Office of Inspector General questioned Mrs. Clinton in November 1994, agents had only one bill Rose sent to Madison Guaranty.[171] This January 31, 1986 bill was in narrative form and did not specify which attorney performed what legal work.

In late July and early August 1995, the offices of Inspector General for the RTC and FDIC issued their reports on possible conflicts of interest when Rose was hired by the RTC to sue Frost & Company for accounting malpractice in its work for Madison Guaranty.[172] But these reports had been prepared without most of Rose's files and billing records concerning its Madison Guaranty representation that would have reflected the true nature of Rose's work for Madison Guaranty.

In November and December 1995, Mrs. Clinton's legal work for Madison Guaranty came under increased scrutiny, not only by the Independent Counsel and the federal grand jury in Little Rock, but also by the Senate Whitewater Committee and outside counsel retained by the RTC.

v. Little Rock Federal Grand Jury Examinations of Rose's Madison Guaranty Work (November and December 1995).

When the Office of the Independent Counsel questioned Mrs. Clinton on April 22, 1995, it only had Clark's two-page fee-recap sheet, having been given no billing records by Rose or Mrs. Clinton. The Independent Counsel asked questions in three general areas relating to Madison Guaranty: 1) how the Rose retainer got started; 2) what work did Mrs. Clinton perform

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80-81 (Dec. 28, 1995).

[171] H. Clinton 11/10/94 FDIC-OIG Int. at 3.

[172] Resolution Trust Corporation Office of Inspector General, Report on Investigation Concerning Rose Law Firm (Aug. 3, 1995); Federal Deposit Insurance Corporation Office of Inspector General, Report of Investigation, Alleged Conflicts of Interest by the Rose Law Firm, (July 28, 1995).

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during the time Rose represented Madison Guaranty; and 3) how and why the retainer terminated.[173] When asked whether she could recall doing any other work for Madison Guaranty other than the matter with the Arkansas Securities Department, Mrs. Clinton said, "I have a recollection of the firm during that time doing some other minor matters for Madison, but I couldn't tell you what they were right now."[174]

Mrs. Clinton was shown a copy of Clark's two-page fee-recap and questioned about what work she did to earn her allocation of the fees.[175] She said, "I think IDC is something different from the stock offering, but I don't have any memory of that."[176] She testified that work she performed coincided with the amounts on the re-cap sheet, but said she did not remember specifically what that work was. She said, "I did work. I just can't remember 10 years from the work exactly what the work was."[177]

Mrs. Clinton further testified about Rose and Madison Guaranty:

> Q I've shown you the memo from Loretta Lynch in March of '92, when this apparently was raised during the campaign. Did you back then look at records from the Rose Law firm? In other words, did the campaign, either Webb or Vince Foster or Bill Kennedy, to your knowledge, get some of the Rose Law Firm files or copies of them and actually go through this matter?
>
> A I think they did, but I don't know for sure whether they did.
>
> Q I think your counsel has stated that as far as you know, you all -- and I can direct this to your counsel.
>
> Mr. Ewing: You all produced all the records relating to this retainer issue? I say that because I have not seen the actual bills except in one instance, and the Rose Law Firm tells me they can't find any more.

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[173] H. Clinton 4/22/95 Depo. at 7-8.

[174] Id. at 30.

[175] Id. at 39-43.

[176] Id. at 41.

[177] Id. at 43.

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> Mr. Kendall: We have produced all such records in our possession with respect to the retainer matter.[178]

In the months before December 1995, the Independent Counsel questioned a number of witnesses before the federal grand jury in Little Rock about the work performed by Mrs. Clinton and Rose for Madison Guaranty from 1985 to 1986. On November 7, 1995, Rose attorney Richard Massey was asked about his and Mrs. Clinton's roles in representing Madison Guaranty.[179]

On December 5, 1995, when questioned about the work done by Mrs. Clinton, Clark was shown a transmittal letter from Mrs. Clinton to Madison Guaranty, dated May 9, 1985, forwarding Rose's statement to Madison Guaranty for services rendered through April 30, 1985.[180] Clark testified that he had never seen the letter and statement before and reiterated that they had not been at Rose. Clark explained again for the grand jury the efforts made to locate Rose's Madison Guaranty billing records. He testified that they could not be located. He also testified about becoming aware that certain original Rose files were removed from Rose by Hubbell and Foster:

> And I'll have to say, one of the biggest of many disappointments to this whole thing was to discover that those files had been removed from the Firm. Now, I didn't have any knowledge as far as sharing information with the campaign but, of course, I first learned with the David Kendall letter that files had been removed from the firm. And that's one of the two reasons I was very upset when I found out about it, because both Vince and Webb knew better, or at least they would have known better had their loyalties been to us.[181]

On December 6, 1995, Mrs. Clinton's former secretary at Rose, Sandra Moody, testified before the grand jury, about Mrs. Clinton's billing practices, and was shown bills to Madison

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[178] Id. at 44-45.

[179] Massey 11/7/95 GJ at 28, 41, 43, 84-85.

[180] R. Clark 12/5/95 GJ at 86; R. Clark 12/2/97 GJ at 66-68.

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Guaranty and transmittal letters she had prepared for Mrs. Clinton in 1985 and 1986.

On December 7, 1995, Jim Blair, a close friend and advisor of President and Mrs. Clinton, was questioned before the grand jury about McDougal's account of how he gave Madison Guaranty legal business to Mrs. Clinton as a result of a conversation he had with then-Governor Clinton in approximately August 1984.[182]

Other witnesses questioned before the grand jury regarding the work of Mrs. Clinton on behalf of Madison Guaranty included several present and former employees of the Arkansas Securities Department and former Arkansas Securities Commissioner Beverly Bassett Schaeffer.[183]

The Independent Counsel received additional documents and information in December 1995, providing further details of Mrs. Clinton's Madison Guaranty representation and Webb Hubbell's involvement. By letter dated December 11, 1995, the attorney representing 1992 Clinton campaign attorney Loretta Lynch produced additional documents falling within the scope of the April 28, 1994 subpoena,[184] claiming that these records had been recently discovered after being in storage since late 1993.[185] Included were memos and notes from the 1992 campaign, including Lynch's notes of a conversation she had with Webb Hubbell on February 24, 1992, in which Hubbell detailed for her Mrs. Clinton's relationship with and work for

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[181] R. Clark 12/5/95 GJ at 70-71 (emphasis added).

[182] J. Blair 12/7/95 GJ at 38-43.

[183] Mrs. Schaeffer appeared on November 8, 1995. Other present and former ASD employees questioned about Rose's representation of Madison Guaranty were: Charles Handley (Oct. 3, 1995), Sarah Handley (Oct. 31, 1995), Lee Thalheimer (Oct. 31, 1995), and Nancy Jones (Nov. 1, 1995).

[184] Letter from Elliot Peters, Keker & Van Nest, to Independent Counsel Kenneth Starr (Dec. 11, 1995) (Doc. No. 263-00000691).

[185] Id.

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Madison Guaranty.[186]

On December 12, 1995, attorneys from the Office of the Independent Counsel spoke with James Hamilton, attorney for Vince Foster's widow, Lisa, about records she had which might have been relevant to the investigation. Atkins, on behalf of Rose, reviewed these documents prior to their production to the Independent Counsel.[187]

On December 17, 1995, Hubbell's attorney, John Nields told the Independent Counsel Hubbell had given him Mrs. Clinton's Rose time sheets from 1987 to 1989.

When Webster Hubbell appeared before the Little Rock grand jury on December 19, 1995, he was questioned extensively about his and Mr. Foster's efforts during the 1992 campaign to gather information and Rose documents covering Mrs. Clinton's work for Madison Guaranty. Hubbell admitted that Foster had asked him to take certain original Rose files with him when they left Rose in January 1993, including the Bank of Kingston file.[188] He admitted he looked at Rose billing records for Madison Guaranty in 1992 but said he returned the billing records to Foster when he completed his review.[189]

vi. Pillsbury Madison Learned That Mrs. Clinton Created the Ward Option Agreement.

On December 19, 1995, Pillsbury Madison, in its investigation for the RTC, questioned Rose attorney, Davis Thomas, who was shown a copy of an option agreement between Seth Ward and Madison Financial dated May 1, 1986.[190] Thomas stated that the letter "g" in the

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[186] Miscellaneous memos and notes of Clinton campaign staff member, Loretta Lynch during the 1992 presidential campaign (Feb. 23-27, 1992) (Docs. No. 263-00000691-714).

[187] Handwritten Notes of Deputy Independent Counsel Hickman Ewing Jr. (Dec. 12-21, 1995) (Doc. Nos. MGSL-FR-00000067 through 75).

[188] Hubbell 12/19/95 GJ at 152-54.

[189] Id. at 93-94, 96.

[190] Pillsbury Madison & Sutro LLP, A Supplemental Report on the Representation of

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processing code on the document identified which Rose attorney was involved with the document. The RTC requested Rose to identify the lawyer.[191]

On December 21, 1995, counsel for Rose advised the RTC that the letter "g" in the processing code identified the author as Mrs. Clinton.[192] On that same day, the RTC sent additional interrogatories to Mr. Kendall asking Mrs. Clinton about legal work done for Madison Guaranty related to the option agreement. On December 28, 1995, Kendall replied to Pillsbury Madison "that Mrs. Clinton has reviewed the options (there were several versions) but does not recall them."[193] Kendall promised Mrs. Clinton would respond to the interrogatories as soon as possible.

Pillsbury Madison negotiated a "tolling" agreement with Rose on Castle Grande matters due to Mrs. Clinton's attorney code being on the document and the outstanding interrogatories.

Pillsbury Madison issued its report on Rose's representation of Madison Guaranty on December 28, 1995. This report noted gaps and inconsistencies in the documentation relative to fees charged Madison Guaranty,[194] despite having issued subpoenas to Rose for Madison Guaranty files and billing data. The report also made reference to the lack of documentation regarding what work had been done by which Rose attorney.

On January 2, 1996, the Senate Whitewater Committee notified Clark that the Senate

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Madison Guaranty Savings & Loan by the Rose Law Firm: Prepared for Federal Deposit Insurance Corporation 2 (Feb. 25, 1996).

[191] Id.

[192] R. Clark 12/2/97 GJ at 75-77. The firm notified the Independent Counsel of this by letter dated January 11, 1996. Id. at 115-17.

[193] Pillsbury Madison & Sutro LLP, A Report on the Representation of Madison Guaranty Savings & Loan by the Rose Law Firm: Prepared for Resolution Trust Corporation 32 (Dec. 28, 1995).

[194] Id. at 4-5.

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wanted him in Washington, D.C. on January 5, 1996 to give a deposition.[195] The Committee also notified Rick Massey that he was to testify before the Senate on January 11, 1996.[196]

vii. Mrs. Clinton's Counsel Produced a Copy of the Billing Records -- January 5, 1996.

On January 5, 1996, Kendall produced certain Rose billing records regarding Madison Guaranty and one document relating to Rose's representation of the Bank of Kingston to the Independent Counsel.[197] Kendall also produced copies of these documents to the RTC and the Senate Whitewater Committee, and distributed them to the press.[198] These records reflected work performed by Mrs. Clinton and other Rose attorneys on behalf of Madison Guaranty from 1985 to 1987.[199] According to Kendall, Carolyn Huber, Special Assistant to the President, Director of Personal Correspondence, discovered the records in her White House office on January 4, 1996.[200]

b. Findings.

About the collection of documentary records at Rose in the spring of 1992, during the presidential campaign, the Independent Counsel reports the following findings:

- Webster L. Hubbell and Vincent W. Foster Jr. collected billing records of Mrs. Clinton's work for Madison Guaranty from Rose archives. The firm's accounting office was requested to create a computer printout summarizing Mrs. Clinton's work for Madison

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[195] R. Clark 12/2/97 GJ at 73-74.

[196] Massey 12/2/97 GJ at 50.

[197] Letter from David E. Kendall, the Clintons' attorney, to John D. Bates, attorney for the Independent Counsel's Office at 1 (Jan. 5, 1996); see also Rose Law Firm Billing Records (1985-1986) (Doc. Nos. DEK014936 through 015049).

[198] Kendall 2/2/96 GJ at 9. Ron Clark of the Rose Law Firm was nearing the end of his deposition on that day when it was learned the billing records had been produced. R. Clark 12/2/97 GJ at 89-91.

[199] Rose Law Firm Billing Records (1985-1986) (Doc. Nos. DEK014936 through 015049).

[200] Kendall 2/2/96 GJ at 11-12.

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Guaranty.

- In the spring of 1992, Hubbell, Foster, and Mrs. Clinton reviewed billing records detailing Mrs. Clinton's work for Madison Guaranty.

- At least two copies of original billing records were created.

- One of those copies -- the copy produced from the White House residence in 1996 -- was in the possession of Foster and Mrs. Clinton at some point. Forensic (including fingerprint examination) and testimonial evidence established that both of them physically handled this copy.

- Another copy, later found in Foster's attic, was at some time in Foster's personal possession.

- Original billing records, routinely archived at Rose, and the original computer-generated billing summary, have not been found.

- Checkout logs produced by Rose showed that on March 25 and May 18, 1992, Mrs. Clinton's secretary, Mildred Alston, checked out files labeled "HRC Time Sheets."

- Hubbell obtained Mrs. Clinton's time sheets for 1987 through 1989 from Alston.

- Mrs. Clinton's time sheets for 1985 through 1986 have not been found.

Concerning shipment of documents from Arkansas to Washington, D.C., and their movement in the White House:

- Insufficient evidence exists to determine conclusively how the billing records were transported to Washington, D.C.

- Evidence gathered excludes, to a high degree of certainty, the possibility that Hubbell transported the billing records to Washington, D.C. or that they arrived in the shipment of Mrs. Clinton's Rose records to the White House.

- Evidence gathered could not exclude the possibility that the billing records traveled to Washington, D.C. with records from the Governor's Mansion or with Foster's personal records.

- Evidence gathered could not exclude the possibility that the billing records went to Washington, D.C. in some other shipment of records not known to the Independent Counsel.

- Records from the Governor's Mansion were variously maintained in White House residence rooms 319A, 323, and 309. Evidence gathered could not exclude the

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possibility that some records from the Governor's Mansion were also maintained at other locations in the White House.

- After Vince Foster's suicide, a portion of records maintained in his office were stored in White House residence room 323's closet.

Concerning searches at the White House conducted in response to subpoenas issued by the Independent Counsel:

- Counsel and staff searched five boxes and two file cabinets containing the Clintons' financial records in response to subpoenas from the Independent Counsel.

- Counsel and staff searched records shipped to Mrs. Clinton from Rose in response to subpoenas from the Independent Counsel.

- Counsel and staff searched records collected and maintained by Hubbell in response to subpoenas from the Independent Counsel.

- The evidence was insufficient to determine whether counsel and staff searched all other records transported to Washington, D.C. in response to subpoenas from the Independent Counsel.

Concerning the billing records' August 1995 placement in Room 319A:

- The evidence was insufficient to determine who put the billing records in White House residence Room 319A.

- The evidence gathered could not exclude the possibility that White House staff members, construction workers, or White House visitors, put the billing records in Room 319A.

- The evidence gathered could not exclude the possibility that Mrs. Clinton put the billing records in Room 319A.

- The evidence gathered could not exclude the possibility that the billing records found in Room 319A came from Foster's office.

- Three witnesses testified about conduct by Mrs. Clinton consistent with her having had the billing records in July 1995.

- Mrs. Clinton gave sworn testimony denying possession of the billing records in July 1995, and denying placing them in Room 319A or knowing how they got there.

Concerning the billing records' discovery and handling after discovery:

- Carolyn Huber testified she discovered the billing records in August 1995 in White

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House residence Room 319A.

- Huber testified she failed to recognize the records' significance and put them in a box in her office until January 1996.

- In January 1996, Huber testified she examined the billing records, recognized their significance, and gave them to David Kendall, personal attorney to President and Mrs. Clinton.

- Kendall, Henry Schuelke, and Jane Sherburne copied the billing records before giving them to the Office of the Independent Counsel.

- The FBI cannot exclude the possibility that the handling of the billing records destroyed forensic evidence.

Concerning discovery of a second set of billing records in the attic of Vince Foster's home:

- Foster stored copies of some records he had on Mrs. Clinton's Madison Guaranty work in a briefcase in his attic, discovered in July 1997.

- Foster's copies included documents and information not contained in the version of the billing records produced by the White House in January 1996.

- Among the records in Foster's possession (but not in the White House production) was a copy of a Rose bill to the Bank of Kingston, dated July 30, 1982, and marked "paid" on October 23, 1984. Foster's records also contained a Foster-created chronology absent from the White House production with entries showing payment of the Bank of Kingston bill in October 1984.

As to Mrs. Clinton:

- The evidence was insufficient to prove beyond a reasonable doubt that Mrs. Clinton withheld documents from the grand jury or otherwise intended to obstruct justice.

c. Evidentiary Summary.

A criminal investigation depends on the ability to obtain and review all available documentary evidence. This is especially true in the investigation of matters that happened a number of years ago. Real and claimed loss of memory and conflicts in those memories can often be resolved through the use and analysis of documents created at the time of the

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transactions.

In trying to reconstruct the work performed by Rose and Mrs. Clinton for Madison Guaranty in 1985 and 1986, investigators sought all Rose files for work done for Madison Guaranty. This included: 1) the legal files themselves, including pleadings, correspondence, memoranda and notes of contacts with the client and others; and 2) individual time sheets kept by attorneys, and the actual billing statements transmitted to clients, with the internal backup documentation justifying the bills.

i. Gathering and Reviewing Records at Rose.

On February 12, 1992, either Vince Foster or Webb Hubbell had the Rose accounting office print a copy of the "Client Billing & Payment History," detailing Hillary Clinton's work for Madison Guaranty.[201] The records summarized Mrs. Clinton's total billing between May 1985 and May 1987 on six different Madison Guaranty matters.

Hubbell testified either he or Foster also asked accounting to get Madison Guaranty records from remote storage.[202] February 14, 1992 check out logs at Rose's remote storage facility show that Mary Russell checked out billing records on Madison Guaranty from for the period 1985-87. These records included files labeled: "'85 Madison Guaranty," "'86 (M's)," and "'87 (M's) Paid Client."[203] On February 21, 1992, Russell also checked out records about Madison Bank and Bank of Kingston from 1981. These included: "'81 & '82 B's & K's,"

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[201] Hubbell 5/7/96 GJ at 20-21; Senate Whitewater Comm. Hearing, supra note 85, at 48 (Feb. 7, 1996) (testimony of W. Hubbell).

[202] Hubbell 5/7/96 GJ at 15, 18-19. The billing records were removed from archives in 1989, returned, and retrieved again in 1992. Former Rose attorney Gary Speed said he retrieved the original Madison Guaranty billing records in 1989 for a lawsuit against the Frost & Company accounting firm. Speed 8/7/96 Int. at 1.

[203] Rose storage facility checkout log (Feb. 1992) (Doc. No. 105-00054214). Rose staff testified the files labeled "M's" included accounting records for multiple clients, including Madison Guaranty, beginning with the letter "M." Russell 4/16/96 GJ at 25-27.

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"Madison Bank," and "Bank of Kingston."[204] Check out logs show that both "'86 (M's)" and "'81 & '82 B's & K's" were returned to storage.[205] On March 24, 1992, a file for "Madison Guaranty" was checked out to "Vera."[206] On March 25, 1992, a second Bank of Kingston file was checked out to "VF/WHK."[207]

Check out logs Rose produced showed that on March 25 and May 18, 1992, "Millie" checked out files labeled "HRC Time Sheets."[208] Millie Alston, Mrs. Clinton's secretary, did not remember checking out any of Mrs. Clinton's time sheets from remote storage. Mrs. Clinton's time sheets from 1985-86 were never found. The Independent Counsel was unable to establish what happened to the time sheets after Alston removed them from storage.

Hubbell testified he had the billing records in February or March 1992.[209] He reviewed bills for any specific contacts Mrs. Clinton might have had with the Securities Department to corroborate campaign statements. After Hubbell reviewed the billing records, he gave them to Foster.

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[204] Rose storage facility checkout log (Feb. 1992) (Doc. Nos. 105-00054214 through 215).

[205] See Rose storage facility checkout log (Feb. 1992) (Doc. No. 105-00054214); see also Russell 4/16/96 GJ at 12-13 (Rose procedure required accounting clerks to highlight entries in the check-out logs for returned files). The "'86 (M's)" and the "'81 & '82 B's & K's" entries were highlighted, meaning they were returned to Rose's remote storage facility.

[206] Rose storage facility checkout log (Mar. 24, 1992) (Doc. No. 105-00054216). Vera Hitt was Rick Massey's secretary.

[207] Rose storage facility checkout log (Mar. 24, 1992) (Doc. No. 105-00054216). Check out logs showed this was the only file returned to remote storage. See id.; see also Russell 4/16/96 GJ at 12-13. This Bank of Kingston file was returned to storage and later produced to the Independent Counsel. Bank of Kingston file produced by Rose (Doc. Nos. 1171-00000008 through 446).

[208] Rose storage facility checkout log (Mar. 25, 1992) (Doc. No. 105-00054198); Rose storage facility checkout log (May 18, 1992) (Doc. No. 105-00054199).

[209] Senate Whitewater Comm. Hearing, supra note 85, at 42 (Feb. 7, 1996) (testimony of W. Hubbell).

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ii. Records Shipped to Washington, D.C.

The Independent Counsel was able to identify five distinct shipments of records from Little Rock to Washington, D.C. in 1992:

a) Records Sent from the Governor's Mansion to the White House.

After the 1992 election, Carolyn Huber moved the Clintons' personal effects from Little Rock to Washington, D.C. Most boxes from the Governor's Mansion were delivered to the White House's residential East Wing. Three rooms on the residence's third floor served as storage space during the relevant time periods, Room 319A, Room 323 and Room 309. The evidence could not exclude the possibility that the Rose billing records were transported in this shipment.

b) Rose Records Shipped to the White House for Mrs. Clinton.

On February 25, 1993, Millie Alston wrote to Amy Stewart, a Rose attorney, about Mrs. Clinton's Rose files, enclosing a six-page list of Mrs. Clinton's files still at Rose. Rose shipped two boxes of documents to the White House in the spring of 1993. Given the detailed inventory accompanying this shipment, the evidence excludes, to a high degree of probability, the possibility that the Rose billing records were transported from Rose.

c) Vince Foster's Office Records Shipped to the White House.

Lorraine Cline, Foster's Rose secretary, boxed Foster's office materials before he left for the White House in 1993. Among the indexes created for this shipment was a draft file list of Mrs. Clinton's files Foster took with him when he left Little Rock to go to Washington D.C. The

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list included a file entitled, "Whitewater Development."[210] Maggie Williams, Mrs. Clinton's Chief of Staff, testified that after Foster's death, she removed the Clintons' personal files from Foster's office and had the documents put in Room 323's closet.[211] Given the lack of an inventory, the evidence could not exclude the possibility that the Rose billing records were transported in this shipment and later moved to Room 323.

d) Clinton Campaign Records.

Joan Watkins, a Clinton campaign worker, said while she was organizing the campaign documents for storage, she learned Betsey Wright had removed certain documents from the campaign before she (Watkins) took charge of storage. Wright acknowledged she kept ten boxes of sensitive campaign documents known as the "Betsey files."[212] Wright turned over the "Betsey files" to Hubbell in January 1993 at his request.[213] Given the detailed inventory accompanying this shipment, the evidence excludes, to a high degree of probability, the possibility that the Rose billing records were transported from Rose.

e) Hubbell's Records Transferred to Washington, D.C.

Hubbell received the Rose "Betsey files" from Betsey Wright around January 1993.[214] Wright produced a five-page index of those files to the Independent Counsel. No Madison Guaranty files are listed. Hubbell added to the "Betsey files" at Rose. Hubbell moved the "Betsey files," Madison Guaranty files, the Bank of Kingston file, and Southern Development Bank Corporation files to his home in Washington, D.C. and later produced some of the files to

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[210] List of Clinton files located in Vince Foster's White House office (Doc. No. BD-DC-00000005).

[211] See Williams 6/2/95 GJ at 36-37; Senate Whitewater Comm. Hearing, supra note 85, at 155 (July 26, 1995) (testimony of M. Williams).

[212] Wright 2/29/96 GJ at 85, 87; Hubbell 12/19/95 GJ at 150.

[213] Wright 2/29/96 GJ at 85, 88.

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the Independent Counsel. Hubbell transferred the bulk of these files to David Kendall in November 1993. The evidence excludes, to a high degree of probability, the possibility that the Rose billing records were transported in Hubbell's shipment to Washington D. C.

iii. Searches of the Records.

Four of these separate sources of documents -- the Clintons' personal records, Mrs. Clinton's law firm records, and Hubbell's records, as merged with the "Betsey files," were searched, in one manner or another, in response to subpoenas issued by regulatory Independent Counsel Fiske and/or Independent Counsel Starr. The fifth potential source of records -- documents Foster took from Rose -- was not in his office when the first subpoena was issued.

iv. The Billing Records in the White House.

Carolyn Huber testified that sometime during the first two weeks in August 1995, she found on a table in Room 319A, and packed in a box, what she later determined were Rose billing records of Mrs. Clinton's Madison Guaranty work. On January 4, 1996, Huber removed the records from the box she had stored them in back in August 1995, and looked at the first page. At that time she identified the documents as Madison Guaranty billing records. After realizing she was in possession of the billing records, she contacted David Kendall.

The Independent Counsel's investigation tried to determine who had access to Room 319A in late July and early August 1995. The Independent Counsel determined that, in addition to the First Family, the following people (with total number of people indicated) had access:

- White House Executive Residence staff (140);
- Construction contractors renovating the White House's heating, ventilation, and air conditioning system (67);
- Secret Service officers escorting construction workers (57);

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[214] Hubbell 12/19/95 GJ at 149-50.

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- Overnight houseguests (78);
- Visitors to the residence (37);
- Staff not recorded on entry and exit logs (2) (Capricia Marshall and Carolyn Huber).

The Independent Counsel conducted interviews in person or by telephone with most of these people, excluding some because of age or other logistical reasons. Each person interviewed said they did not place billing records in Room 319A and did not know how they got there.

a) Renovation.

In July and August 1995, the White House's executive residence heating, ventilation, and air conditioning system was renovated. The Independent Counsel closely examined this activity and determined that approximately a month before the Clintons' Wyoming summer vacation, Assistant Chief White House Usher Dennis Freemyer decided to run certain air conditioning and heating ducts through a closet in Room 323, instead of through an adjacent bathroom. In mid-July 1995, Freemyer asked Capricia Marshall if he could use the closet in this manner and she told him he could. Freemyer checked the closet on August 15, 16, and 17, finding it locked each time. Each time, Freemyer contacted Marshall to gain access to the closet. On the morning of August 18, the closet was unlocked and empty. Freemyer thought Marshall told him she emptied the closet. Freemyer said work on the closet occurred on August 18, 1995.

b) Mrs. Clinton.

Beginning in June 1995, Mrs. Clinton used Room 323 to write a book. In July and August 1995, she worked daily in Room 323, though the time she spent there varied. Three witnesses testified that in July 1995 they saw Mrs. Clinton carrying a box possibly containing the

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billing records. CW[215] testified about a brief encounter with Mrs. Clinton in July 1995. CW encountered Mrs. Clinton in a doorway connecting a hall to the service elevator and stairs to the second floor.[216] Mrs. Clinton was "comfortably" carrying a brown cardboard box in her arms. CW noticed that inside the box there was a stack of papers "coiled or rolled up into a -- what appeared to be a tube."[217] One end of the papers stuck out. The papers were an off-white color, slightly discolored due to age, and the edges appeared curled, as if used. The only person CW told about this brief encounter with Mrs. Clinton was CW's spouse that evening.

David Parker, a construction worker, said he saw Mrs. Clinton coming upstairs to the third floor with a cardboard box. Parker and two other individuals held the door open for Mrs. Clinton as she walked through. Parker thought this encounter happened in July 1995. Shown a copy of the billing records rolled up, Parker said they looked like his renovation work drawings.

Construction worker William Fowble remembered seeing Mrs. Clinton carrying a cardboard box on the residence's third floor. He was working in the attic above the North Portico hall when he saw her walking from the third floor main corridor into the North Portico hall. Fowble described the box as not very large, so Mrs. Clinton could easily carry it. He did not see what was in the box.

v. Handling the Billing Records after Discovery.

After Huber discovered the records, notwithstanding questions raised by Special Counsel to the President Jane Sherburne about handling the records, Kendall, Sherburne and Henry Schuelke agreed that they had to review and make copies of the records before notifying the

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[215] To obtain this confidential witness's information, the Office of Independent Counsel promised that their identity would remain confidential unless required in a court proceeding.

[216] CW 8/15/96 GJ at 7-8.

[217] Id. at 9.

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Office of the Independent Counsel. Huber and Sherburne proceeded to make two copies of the records. Kendall then took the original records and one copy with him back to his office, where he locked the original in a drawer and left the copy with staff to make six or seven more color copies. Once copies were made, Mark Rolfe, a Williams & Connolly paralegal, handled the "original" records to copy check every page.

Once the originals were produced to the Independent Counsel, the records were examined by the FBI. The examination found: one palm print of Mildred Alston; two fingerprints of Hillary Rodham Clinton; four fingerprints of Vincent W. Foster Jr.; three fingerprints of Sandra Hatch (a Rose employee); six fingerprints of Carolyn Huber; thirty-six fingerprints and one palm print of Marc Rolfe; and one fingerprint of Henry F. Schuelke III. The FBI Laboratory identified some of the red handwritten notations on the billing records as Foster's.

vi. The Records in Foster's Attic.

The Independent Counsel received a second set of Madison Guaranty billing records on July 31, 1997 from Vincent Foster's widow, Lisa Foster Moody. They were found in Foster's briefcase in the attic of his house in Little Rock, Arkansas in July 1997. Moody's best guess was that the briefcase was put in the attic by Foster shortly after the 1992 election.

The set of Madison Guaranty billing records found in Foster's attic differed from the records produced in January 1996 in four ways: 1) they did not contain any of red markings and handwriting identified as Foster's; 2) they did not contain post-it notes like those on the White House documents; 3) there were some minor underlining and other marks not in red ink that did not appear on both sets of records; and 4) more documents about Madison Guaranty and other related entities accompanied Foster's documents.

Among the additional documents contained in the briefcase were: 1) a copy of a Rose bill

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to the Bank of Kingston, dated July 30, 1982, for total fees and costs of $5,893.63. The copy bore the handwritten word "paid" and the date October 23, 1984, reflecting payment of $5,000.00; 2) a five-page chronology of Rose's representation of Madison Guaranty; and 3) an original memorandum of Rick Massey.

2. Delays Due to Contumacious Conduct and Refusal to Testify or Produce Documents.

Delays in obtaining relevant evidence included Susan McDougal's refusal to testify (despite a court order compelling her testimony); and the contumacious conduct by Herby Branscum Jr. and Robert Hill.

a. Susan McDougal.

On August 20, 1996, Susan McDougal, was sentenced by U.S. District Judge George Howard Jr. to two years imprisonment, and ordered to pay $300,000 in restitution to the SBA. On the day of her sentencing, Susan McDougal was subpoenaed to testify before the federal grand jury in Little Rock. She filed motions to quash the subpoena, all of which were denied by U.S. District Judge Susan Webber Wright, who was the judge supervising the grand jury's work. The Court entered an order compelling her testimony, under 18 U.S.C. § 6002. Pursuant to that order, none of her testimony could be used against her in any criminal prosecution, except a prosecution for perjury. On September 4, 1996, Mrs. McDougal was asked the following three questions before the grand jury:

Q. Did you ever discuss your loan from David Hale with William Jefferson Clinton?

. . . .

Q. Did you ever discuss Lorance Heights with William Jefferson Clinton?

Q. To your knowledge, did William Jefferson Clinton testify truthfully during the

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course of your trial?[218]

Mrs. McDougal refused to answer these questions, and Judge Wright held her in civil contempt.[219] Her contempt order was quickly affirmed by the U.S. Court of Appeals for the Eighth Circuit.[220]

On September 23, 1996, shortly after Susan McDougal was incarcerated because of her contempt of Judge Wright's order, President Clinton was asked on a television news program about her allegations that the Independent Counsel had asked her to lie about him. The President replied, "[I]sn't it obvious?"[221] The Independent Counsel then wrote President Clinton, through his counsel, several times asking that he encourage Susan McDougal to testify. He declined, through counsel, to encourage Susan McDougal to tell what she knew about the matters under investigation.

After Susan McDougal refused to answer questions in early September 1996, additional evidence was discovered which further increased the importance of Susan McDougal's testimony. President Clinton had testified at her trial that he had never received a loan from Madison Guaranty. Jim McDougal told this Office that Madison Guaranty had made a loan to Bill Clinton to pay off a loan to the Whitewater Corporation at the Madison Bank & Trust. In December 1996, the Independent Counsel's Office located a microfilm copy of a Madison Guaranty cashier's check made payable to "Bill Clinton" in the amount of $27,600. Internal Madison Guaranty documents indicated that Madison Guaranty had treated the check to "Bill

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[218] S. McDougal 9/4/96 GJ at 9.

[219] Order, In re: Grand Jury Subpoena, No. GJ-96-3 (E.D. Ark. Sept. 6, 1996).

[220] In re: Grand Jury Subpoena: United States v. McDougal, 97 F.3d 1090 (8th Cir. 1996).

[221] The NewsHour with Jim Lehrer: Tr. of Jim Lehrer Interview of President William J. Clinton (PBS television broadcast) (Sept. 23, 1996).

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Clinton" as a loan. The Office also located a check payable to Madison Guaranty drawn on the James B. McDougal Trustee account, dated August 1, 1983, with the notation "Payoff Clinton." This check, in the amount of $5,081.82, was signed by Susan McDougal and was in the precise amount necessary to payoff the last portion of the $27,600 loan.

The importance of Susan McDougal's testimony was heightened when, on March 8, 1998, Jim McDougal died in federal prison. As to a number of questions, Jim McDougal had advised that the Office needed to "ask Susan," contending there were transactions that she knew or should have known about, and he did not. After an 18-month period of civil contempt ended, Susan McDougal started service of her two-year sentence on her four felony convictions.

In light of new information gathered by the OIC since early September 1996, Susan McDougal was required to testify again in April 1998 before the grand jury. The Court, at the grand jury's request, again ordered Susan McDougal to answer its questions. She again refused to testify, including answering questions about the check signed by her with the notation, "Payoff Clinton."

Susan McDougal's testimony was initially unavailable to the Office pending resolution of the criminal charges against her. Following her conviction, she refused two lawful orders to testify. Susan McDougal (one of seven critical percipient witnesses to events) refused to answer questions before the grand jury investigating Madison Guaranty matters.

b. Branscum and Hill.

An investigation into allegations about Perry County Bank ("PCB") encountered substantial delay. Subpoenas were issued to the PCB, its owners Herby Branscum Jr. and Robert M. Hill, and to their professional corporations. After the initial production of certain records, the PCB, Branscum, and Hill, and their associations filed motions to quash the grand jury subpoenas,

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contending that the Independent Counsel had exceeded his jurisdiction. Chief United States District Court Judge Stephen Reasoner, who supervised the grand jury, denied the motions to quash, ordering the production of all the records requested.

When they refused, Judge Reasoner held Hill, Robert M. Hill, P.A., Branscum, Herby Branscum Jr. P.A., and PCB in contempt for refusing to comply with properly issued subpoenas duces tecum. The court imposed a fine of $5,000 per day on PCB, $1,000 per day on Branscum, and $1,000 per day on Hill until they complied with the subpoena. Robert M. Hill, P.A., Branscum, and PCB eventually purged themselves of contempt by obeying the district court's order and responding to the subpoenas. Branscum's association and Hill complied with the subpoenas only after they appealed and the Eighth Circuit affirmed the contempt citation. The district court eventually imposed fines of $77,000 as to both Branscum's association and Hill. The contumacious conduct delayed this investigation by more than six months.

3. Privilege Litigation.

Unmeritorious litigation by the White House included its claim to an attorney/client privilege between an individual involved in a federal criminal investigation and a government lawyer.[222] On June 21, 1996, the Office of the Independent Counsel served the White House with a grand jury subpoena requiring production of "[a]ll documents created during meetings attended by any attorney from the Office of Counsel to the President and Hillary Rodham Clinton (regardless whether any other person was present)" concerning several Whitewater-related subjects.[223] The White House identified, but refused to turn over, nine sets of notes responsive to the subpoena. It asserted that executive privilege, attorney-client privilege, and the attorney work product doctrine shielded the notes from production.

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[222] See, e.g., In re: Grand Jury Subpoena Duces Tecum, 112 F.3d 910 (8th Cir. 1997).

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Although the White House previously had advised this Office it would rely on executive privilege regarding these documents, before the district court it asserted only a governmental attorney-client privilege, arguing that Mrs. Clinton had a privilege for communications with her government-paid attorneys. The district court, in an unpublished opinion, held that the attorney-client privilege protected the documents because Mrs. Clinton and the White House had a "genuine and reasonable (whether or not mistaken)" belief that the conversations at issue were privileged.

The Independent Counsel appealed to the United States Court of Appeals for the Eighth Circuit. In a split decision, the court of appeals reversed the district court. The majority opinion, written by Judge Bowman and joined by Judge Wollman, concluded that even if a privilege protects communications between the Office of the President and its attorneys, "the White House may not use the privilege to withhold potentially relevant information from a federal grand jury."[224] The court reasoned, among other things, that assertion of the privilege would work against "the strong public interest in honest government and in exposing wrongdoing by public officials."[225] The Supreme Court declined to review the case. More than twelve months of delay were experienced in litigation with the White House on this issue.[226]

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[223] Id. at 913.

[224] Id. at 915.

[225] Id. at 921.

[226] Id. Nor was this the only occasion in which White House litigation delayed this investigation. Notwithstanding the rejection of its position by the Eighth Circuit, the White House reasserted the identical arguments before the District of Columbia Circuit, where they were, again, rejected. In re: Lindsey, 158 F.3d 1263 (D.C. Cir. 1998) (per curium).

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4. Successor to a Regulatory Independent Counsel -- A Broad Mandate and Inherent Jurisdictional Questions.

One significant factor that differentiates this Independent Counsel's investigation from that of any other independent counsel was the investigation's genesis. The Independent Counsel was the successor to a regulatory independent counsel investigation conducted by Robert Fiske. Fiske was appointed by Attorney General Janet Reno and given broad investigative jurisdiction. When Independent Counsel Starr was appointed, the Special Division authorized him to conduct a criminal investigation of the same jurisdictional scope. The Independent Counsel (unlike any other independent counsel's office) succeeded to an already ongoing criminal investigation.

One example of the breadth of Mr. Fiske's inquiry will suffice to illustrate the situation. Mr. Fiske inherited an ongoing investigation of the criminal conduct of David Hale, a former Municipal Court judge in Little Rock, Arkansas. Hale's involvement with Capital Management Services, Inc. was squarely within Mr. Fiske's original jurisdictional grant. Hale subsequently entered into a cooperation agreement with Mr. Fiske and pleaded guilty to federal offenses while agreeing to provide Mr. Fiske with evidence about other ongoing crimes. One of the crimes Hale disclosed was a heretofore unknown tax fraud scheme involving a Texas bankruptcy perpetrated by Governor Jim Guy Tucker and two others.

The crime Hale disclosed was squarely related to Mr. Fiske's jurisdiction in the common understanding of prosecutors nation-wide. One test of the veracity of a corroborating witness is the witness's ability (or inability) to provide a prosecuting office with leads to criminal conduct that is otherwise unknown. Hale's disclosure of the Tucker bankruptcy and tax fraud was a classic example of such a test -- if the facts were as Hale portrayed them to be, that would be powerful confirmation of his inherent credibility.

Mr. Fiske initiated an investigation of the Tucker bankruptcy and tax fraud allegation --

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an investigation that substantially corroborated Hale's account and led to the indictment and guilty plea of Governor Tucker, William Marks, and John Haley. Mr. Fiske's investigation was ongoing when Independent Counsel Starr was appointed. Because it was related to the core investigation, this Office was obliged to continue where Mr. Fiske left off.

On June 7, 1995, a grand jury in the Eastern District of Arkansas indicted Arkansas Governor Jim Guy Tucker, and his business partner, William J. Marks Sr., and his lawyer, John H. Haley. Prior to indictment, Tucker filed a motion seeking discharge of the grand jury on jurisdictional grounds. That motion was denied by Judge Reasoner. The indictment alleged they had pursued a fraudulent scheme to transfer valuable cable television assets to greatly minimize taxes utilizing a sham bankruptcy proceeding involving Land Management System, Inc. ("LMS"). The Attorney General had earlier determined the LMS bankruptcy was a related matter within the Independent Counsel's jurisdiction under 28 U.S.C. § 594(e), and had referred to the Independent Counsel prosecutorial jurisdiction to investigate whether "any person committed any federal crime relating to the bankruptcy action." The Special Division had entered an order confirming this jurisdiction. Nevertheless, Governor Tucker moved to dismiss the indictment on grounds that the Independent Counsel lacked jurisdiction to prosecute the case.

The case was assigned to Senior United States District Court Judge Henry Woods, who on September 5, 1995, granted the motion and dismissed the indictment as to all three defendants. The district court held that offenses did not fall within and were not related to the jurisdiction of the Independent Counsel.

The Independent Counsel appealed to the United States Court of Appeals for the Eighth Circuit. The court of appeals unanimously reversed the district court in March 1996. The court of appeals first held that the Attorney General's decision to refer the matter to the Independent

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Counsel was not reviewable. The court of appeals then held that, even if it could review the Attorney General's decision, it would reverse the district court's conclusion that the indictment concerned matters unrelated to the original grant of jurisdiction. The court of appeals said Governor Tucker had "clearly defined" relationships with Jim McDougal, CMS, and Madison Guaranty.[227] The panel denied rehearing and the Eighth Circuit denied the suggestion for rehearing in banc.[228] The Supreme Court denied certiorari in October 1996.

This delay tactic would have been unavailable to the defendants had the prosecution been brought by Mr. Fiske or the Department of Justice. Nearly three years elapsed between the time of the indictment and the defendants' guilty pleas. At least one year of that delay was occasioned by litigation relating to the jurisdiction of this Office.[229]

This endless litigation prolonged the Independent Counsel's tenure in a way that is unique. To an Independent Counsel's Office, the defendant's litigative strategy inexorably leads to a seemingly endless inquiry.

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[227] 78 F.3d 1321.

[228] See United States v. Tucker, 82 F.3d 1423 (8th Cir. 1996).

[229] Nor was this the only such instance of jurisdictional delay. For example, on April 30, 1998, a grand jury in the District of Columbia issued a 10-count indictment against Webster Hubbell, his wife Suzanna Hubbell, his tax lawyer Charles Owen, and his accountant Michael Schaufele. See United States v. Hubbell, 11 F. Supp. 2d 25, 28 (D.D.C. 1998). Under 28 U.S.C. §594(e), the Special Division concluded the alleged payment of consulting fees and failure to pay taxes were related to the Office's original grant of jurisdiction. Id. at 27. Nonetheless, the United States District Court for the District of Columbia, Judge James Robertson presiding, granted Hubbell's motion to dismiss the indictment as beyond the Office's jurisdiction, concluding the "asserted connection" between the original jurisdiction and the charges relating to the consulting fees "too attenuated" to constitute "related matters" under Section 594(e). Id. at 32. The United States Court of Appeals for the District of Columbia reversed. In a per curium opinion joined by Judges Wald and Williams, the court of appeals ruled the Special Division's referrals under 594(e) are entitled to deference and the referral of Hubbell's offenses was proper. United States v. Hubbell, 167 F.3d 552, 558-59 (D.C. Cir. 1999). In this instance, the delay occasioned by jurisdictional litigation was more than 18 months.

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M. Summary Analysis of the Conduct of President and Mrs. Clinton.

1. President Clinton.

Due to the centrality of his testimony to the issues confronting this investigation, the Independent Counsel investigated whether President Clinton gave knowingly false testimony during the McDougals' and Governor Tucker's trial and, thereby, concealed his participation in or knowledge of McDougal's criminal activity.

a. $27,600 Loan to Bill Clinton.

The Independent Counsel investigated whether the President gave knowingly false testimony when he testified he "never borrowed any money from Madison Guaranty,"[230] never caused anybody to borrow any money for his benefit, and never had any personal loan with Madison Guaranty at any time.[231] Along with additional documentary and testimonial evidence, two checks were located by the Independent Counsel proving a loan was taken out in Bill Clinton's name at Madison Guaranty.

The first check was a Madison Guaranty cashier's check, dated November 15, 1982, made out to "Bill Clinton" in the amount of $27,600. The original check was found in July 1997 by happenstance with other Madison Guaranty records in the trunk of a car following a tornado.[232]

The second check was a microfilm copy, dated August 1, 1983, from the James B. McDougal Trustee account in the amount of $5,081.82. The check was payable to Madison Guaranty and was signed by Susan McDougal. The check amount was exactly equal to the

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[230] W. Clinton 4/28/96 Depo. At 11, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark. 1996).

[231] See id.

[232] A microfilm copy of the check was located in December 1996.

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outstanding principal and interest on the November 15, 1982 loan as of August 1, 1983. The check's memo line had the words "Payoff Clinton." Proceeds from both checks were used to the benefit of Whitewater Development.

But neither check reflected a signature or endorsement by Bill Clinton or anyone else. The backs of both checks had bank stamps, indicating that they had been deposited and processed. Susan McDougal was charged with criminal contempt and obstruction of justice in part for refusing to testify about matters that included the $27,600 Madison Guaranty loan.

The Independent Counsel determined that the evidence about this loan was insufficient to prove beyond a reasonable doubt that President Clinton knew of the loan from Madison Guaranty, caused anyone to borrow money for his benefit from Madison Guaranty, or had any personal loan at any time from Madison Guaranty. Consequently, the evidence was insufficient to prove beyond a reasonable doubt that his testimony about the alleged loan was knowingly false.

b. Knowledge of CMS Loan to Susan McDougal.

The Independent Counsel also examined whether President Clinton gave knowingly false testimony when he testified he did not know about the $300,000 loan made by CMS to Susan McDougal in April 1986 that benefited Whitewater Development. There was testimony from two people that Governor Clinton knew about the loan to Susan McDougal.

Both Jim McDougal and David Hale testified they spoke with Governor Clinton about the loan several times, separately and together. McDougal, after he began cooperating with the government, and Hale recalled discussing the loan with Governor Clinton on one such occasion at McDougal's trailer office at Castle Grande (although they contradicted each other on some issues including the time of the alleged meeting). Jim McDougal, however, had denied in his

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trial testimony that the meeting took place. In addition, some evidence existed that Governor Clinton knew of Whitewater Development's acquisition of the Lorance Heights property -- the down payment of which was derived from the CMS loan to Susan McDougal. The Independent Counsel nevertheless determined the evidence was insufficient to prove beyond a reasonable doubt that President Clinton knew about the loan, or that his testimony about the loan was knowingly false.

c. Retention of Rose.

The Independent Counsel also investigated whether President Clinton gave knowingly false testimony at the same trial and during an April 1995 deposition about the circumstances of Madison Guaranty's retention of the Rose Firm and Mrs. Clinton. Jim McDougal testified that Governor Clinton had jogged by Madison Guaranty, and in a meeting with McDougal, McDougal agreed to give some of Madison Guaranty's legal work to Mrs. Clinton. Bill Henley, Susan McDougal's brother, partially corroborated McDougal's account, recalling a morning when Governor Clinton stopped by Madison Guaranty and McDougal mentioned giving Rose some business. Susan McDougal made public statements to the media corroborating Jim McDougal's testimony.

During his testimony, President Clinton did not deny that the retention of Rose happened in the manner described by Jim McDougal. President Clinton said he had jogged by Madison Guaranty occasionally, and had stopped in on at least one occasion to see Jim McDougal. President Clinton testified he could not remember having a conversation with McDougal about giving legal business to his wife, but did not directly dispute McDougal's account of the conversation.

The Independent Counsel determined the evidence was insufficient to prove beyond a

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reasonable doubt that President Clinton's testimony that he could not remember this matter was knowingly false.

2. Mrs. Clinton.

The Independent Counsel also examined Mrs. Clinton's testimony to this Office, to the grand jury, and other investigative bodies to determine whether Mrs. Clinton had provided knowingly false testimony in an effort to conceal her own role and conduct in relation to Jim McDougal and Madison Guaranty.

a. Retention of Rose.

One area of inquiry was the question of how Madison Guaranty retained Rose. On several occasions, including in testimony before the grand jury, Mrs. Clinton said although she was the billing partner for Madison Guaranty, that client was obtained by Rose through an associate with the firm, Rick Massey. Mrs. Clinton said Massey was a friend of Madison Guaranty's president, John Latham. She testified she was involved in the retention only because Jim McDougal's other financial institution, Madison Bank, had an unpaid old bill with Rose. Before the firm would undertake representation of Madison Guaranty, the bill needed to be paid. Mrs. Clinton testified she met with McDougal on April 23, 1985, and arranged payment of the old bill and the payment of a retainer.

Massey testified he did not remember bringing in Madison Guaranty as a client. Massey recalled pitching the business to Latham, but was told by Latham that Jim McDougal selected the attorneys Madison Guaranty hired, and that McDougal was happy with Mitchell Williams, Jim Guy Tucker's law firm. Massey testified he did not remember asking for Mrs. Clinton to arrange for the payment of the old bill, and did not remember asking Mrs. Clinton to be the billing partner. Documentary and testimonial evidence demonstrated conclusively that the old bill was

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paid and settled in October 1984, six months before the date Mrs. Clinton testified she had visited McDougal to arrange for its payment.

In addition, Jim McDougal testified Governor Clinton had jogged by Madison Guaranty one morning in late August or early September 1984. McDougal claimed Governor Clinton said something had happened at Rose reducing Mrs. Clinton's earnings and McDougal offered to send her legal work. McDougal testified he offered to put Rose on retainer for $2,000 monthly, and that Mrs. Clinton came by McDougal's office the same day of Governor Clinton's visit and finalized the arrangement.

The Independent Counsel has concluded Mrs. Clinton's testimony was factually inaccurate -- the allegedly unpaid bill was paid and settled before April 1985. The evidence also established that in 1983, prior to the bill's payment, Mrs. Clinton was asked to assist in the collection of the unpaid bill. Because a finder of fact likely would be unable to exclude the possibility that Mrs. Clinton's testimony was the product of confusion and error, the Independent Counsel determined insufficient evidence existed to establish beyond a reasonable doubt that Mrs. Clinton knowingly gave false testimony about the retention of Rose by Madison Guaranty.

b. Nature of Rose Work for Madison Guaranty.

Mrs. Clinton also made numerous statements to the RTC, to the Independent Counsel, and before the grand jury about the relationship between Madison Guaranty and Rose, as well as her own work related to Madison Guaranty. In addition to the work on the preferred stock matter, Rose and Mrs. Clinton did legal work for Madison Guaranty and Seth Ward on the Castle Grande property. Rose and Mrs. Clinton performed legal work on two issues about the use of the property involving approval by state agencies: 1) whether a brewery could be constructed at the property, involving the Arkansas Alcohol Beverage Commission; and 2) whether the utility

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on the property could sell services outside of Castle Grande, involving other Arkansas state agencies.

Initially, Mrs. Clinton's testimony about this work was vague and incomplete. She testified to a lack of recall of events. Upon discovery of the Rose billing records, Mrs. Clinton testified in greater detail. The Independent Counsel considered whether Mrs. Clinton's lack of memory was an instance of feigned forgetfulness. Of particular evidentiary importance to the resolution of this question was Mrs. Clinton's conduct during the 1992 campaign -- at that time there was substantial public interest in Mrs. Clinton's legal work for Madison Guaranty and both she, Webb Hubbell, and Vince Foster reviewed Rose records of her prior work for Madison Guaranty.

The Independent Counsel determined the evidence was insufficient to prove beyond a reasonable doubt that Mrs. Clinton committed any crimes in connection with Madison Guaranty. The evidence was insufficient to establish that Mrs. Clinton knew how Madison Guaranty and Seth Ward intended to use the option agreement when it was drafted. The Independent Counsel determined the evidence, including Rose billing records, was insufficient to prove beyond a reasonable doubt that her statements to the RTC, the Independent Counsel, and before the grand jury were knowingly false.

c. Billing Records.

On January 5, 1996, eighteen months after Mrs. Clinton received a federal grand jury subpoena for all records in her possession about Madison Guaranty and related entities, a copy of Rose billing records reflecting the firm's and Mrs. Clinton's representation of Madison Guaranty and related entities were produced by her lawyer. The evidence about the circumstances surrounding the eighteen-month delay in producing the billing records was inconclusive. Webb

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Hubbell testified he and former Deputy Counsel to the President Vincent W. Foster Jr. had the billing records in February/March 1992. Carolyn Huber, an assistant to President Clinton, testified before the Senate Whitewater Committee that she found certain documents in the White House residence in August 1995 and put them in an office where they remained until January 1996. She also testified she found them again in January 1996 and realized those same documents were the billing records. It was only then that the records were produced to the Independent Counsel.

The Independent Counsel determined the evidence surrounding the handling of the billing records between March 1992 and August 1995 and January 1996 was inconclusive, and thus insufficient to prove beyond a reasonable doubt that any person, including Mrs. Clinton, knowingly and willfully possessed the billing records with the intent to obstruct justice, or that any person, including Mrs. Clinton, gave knowingly false testimony regarding the handling of the billing records.

V. CONCLUSION

The Madison Guaranty/Whitewater investigation resulted in the convictions of twelve defendants, including Jim McDougal, Susan McDougal, former Associate Attorney General and Rose partner Webster L. Hubbell, and Arkansas Governor Jim Guy Tucker. The Independent Counsel determined the evidence was insufficient to prove to a jury beyond a reasonable doubt that either President Clinton or Mrs. Clinton knowingly participated in any criminal conduct involving Madison Guaranty, CMS, or Whitewater Development, or knew of such conduct. The evidence about their testimony and conduct, in this investigation and other investigations involving the same entities, was also, in the Independent Counsel's judgment, insufficient to prove beyond a reasonable doubt that either committed any criminal offense, including perjury

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(18 U.S.C. § 1621) or obstruction of justice (18 U.S.C. § 1503).

The Independent Counsel conducted a thorough and comprehensive investigation, which has now concluded. Matters involving Madison Guaranty/Whitewater are closed.

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APPENDIX 1

HISTORICAL BACKGROUND FOR ELIMINATION OF THE DECLINATION CLAUSE

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This Appendix discusses the historical background for the elimination of the declination clause from the statutory language of the Independent Counsel Reauthorization Act of 1994 ("Act"). The history of the declination clause's deletion is relatively clear. Consideration of the Act's reauthorization began shortly prior to Independent Counsel Lawrence E. Walsh's issuance of his final report on the Iran-Contra matter. Several observers anticipated that the declination clause would result in the publication of a final report that contained accusations of misconduct against individuals who had not been charged with or convicted of criminal offenses. For example, Lt. Col. Oliver North's attorney testified before Congress:

> The [Independent Counsel] intends to issue a report to do what he could not do in court. It will be a "final shot" -- a mammoth document assessing blame across government. But who can fight back -- who can amass the funds to rebut such a report? What about reputations and notions of fairness?[1]

Thus, some suggested that the declination clause be modified or deleted to prevent what they perceived to be inappropriate prosecutorial conduct.

House Consideration -- The version of the reauthorization of the Act reported by the House Judiciary Committee for consideration by the House of Representatives (H.R. 811, 103d Cong.) retained the declination clause in section 594(h) (1) (B) unmodified.[2] The limited record of the House's initial consideration of the Act's reauthorization supports a congressional intent (at that time) to maintain the broad disclosures necessitated by the declination clause. This can be seen in the proposed amendment to section 594(h) (2), which was adopted by the House.

Prior to 1994, the Act authorized the Special Division to release to the public any

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[1] 139 Cong. Rec. E660 (daily ed. Mar. 17, 1993) (statement of Rep. Henry J. Hyde) (reprinted testimony of O'Donnell).

[2] See H. R. Rep. No. 224, 103d Cong., 1st Sess. 22, 29 (1993).

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materials the Court deemed "appropriate."[3] As reported by the Judiciary Committee, H.R. 811 included a proposed amendment that would have authorized the Special Division to release materials it considered:

> in the public interest, consistent with maximizing public disclosure, ensuring a full explanation of independent counsel activities and decision making, and facilitating the release of information and materials which the independent counsel has determined should be disclosed.[4]

The House's expressed intent was to provide greater guidance to the Court on materials to be released.[5] The language demonstrates that the House envisioned disclosure of a comparatively comprehensive report -- one that maximized public disclosure -- whose content would turn, at least in part, on the independent counsel's judgment. When the House passed H.R. 811 on February 10, 1994, it contained this provision.[6]

Senate Consideration -- When the Senate Committee on Governmental Affairs reported the reauthorization bill's first version (S. 24, 103d Cong.) for the Senate's consideration, the declination clause again remained unchanged.[7] Later that year, however, during consideration of S. 24 on the Senate floor, Senator Dole sought to amend the reauthorization bill to limit the scope of the independent counsel's final report. Senator Dole's amendment, adopted by the Senate, changed the text of section 594(h) (1) (B) in two ways: (1) it struck the words "fully and

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[3] Independent Counsel Reauthorization Act of 1987, Pub. L. No. 100-191, 101 Stat. 1293, 1302 (codified as amended at 28 U.S.C. § 594(h) (2) (1987)).

[4] H.R. Rep. No. 224, 103d Cong., 1st Sess. 29 (1993).

[5] Id. at 22.

[6] 140 Cong. Rec. H442 (daily ed. Feb. 10, 1994).

[7] See S. Rep. No. 101, 103d Cong., 1st Sess. 60 (1993).

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completely;" and (2) it struck the declination clause.[8]

Senator Cohen, one of the bill's managers, explained the reason for the amendment's adoption this way:

> Senator Levin and I would like to clarify something for the record so there will be a proper legislative history to this particular amendment.
>
> . . . .
>
> We believe the final report should be a simple declaration of the work of the independent counsel . . . . [W]ith respect to cases in which the independent counsel had determined that no . . . indictment should be brought, [the amendment] preclude[s] that independent counsel from expressing an opinion or conclusion as to the culpability of any of the individuals involved.
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> . . . .
>
> So the purpose of the amendment is quite clear, to restrict the nature of the report to the facts without engaging in either speculation or expressions of opinion as to the culpability of individuals unless that culpability . . . rise[s] to a level of an indictable offense.[9]

Senator Levin immediately reiterated the same point:

> [T]he amendment we are accepting relative to the final report is, indeed, to try to avoid having independent counsel state conclusory opinions that the subject of an investigation engaged in criminal wrongdoing in the absence of bringing an indictment against that person.[10]

Senator Dole, the amendment's sponsor, explained its purpose that same day:

> [W]e have modified the final report language, because Lawrence Walsh could not indict you or could not convict you, he would try to do it in the court of public opinion by filing some report, in effect venting all of his spleen . . . . I am pleased that the managers of the bill, Senators Cohen and Levin, have accepted my amendment limiting the report's permissible scope.

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[8] 139 Cong. Rec. S15886 (daily ed. Nov. 17, 1993).

[9] Id.

[10] Id.

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. . . .

> It is my hope that . . . the amendment limiting the permissible scope of the final report, will help inject some safeguards into the independent counsel statute so that future abuses can be avoided . . . . [W]e hope we have been able to make the changes there, maybe state some facts, but not opinions, not editorialize.[11]

As Senator Dole said the next day:

> This . . . amendment would retain the final report requirement, but would eliminate the language in the reauthorization bill that allows the independent counsel to describe, in the final report, the "reasons for not prosecuting any matter within the prosecutorial jurisdiction of such independent counsel."
>
> If retained, this language would have been an open invitation to independent counsels to editorialize on cases that they, for whatever reason, chose not to bring, smearing hard-earned reputations in the process.[12]

Reflecting further on his amendment in January 1994 (after the Iran-Contra final report was issued), Senator Dole reiterated his intent: "This amendment . . . was designed to ensure that future independent counsels will not resort to Walsh-style smear tactics in their final reports."[13]

Conference Report -- The reauthorization bill's competing House and Senate versions differed substantially on the final report requirement. The House version contained provisions that expanded the scope of public disclosure authorized for the Special Division and left the final report obligations of an independent counsel unmodified. The Senate, by contrast, left the Special Division's disclosure authorization unchanged and made two substantive changes to the final report language -- deleting "fully and completely" and the declination clause.

The conference committee resolved these two views as follows:

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[11] Id. at S15887 (statement of Sen. Dole).

[12] 139 Cong. Rec. S15972 (daily ed. Nov. 18, 1993) (statement of Sen. Dole).

[13] 140 Cong. Rec. S41 (daily ed. Jan. 25, 1994) (statement of Sen. Dole).

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First, the committee deleted the House's proposed change to section 594(h) (2) relating to the Special Division. As the conference committee explained, the Special Division's decision to release the Iran-Contra report made clear that amending the provision to provide for greater public disclosure was unnecessary:

> [T]he standards in the 1987 law on releasing the final report to the public are not overly restrictive, as evidenced by the special court's decision to release the final report in the Iran-Contra matter despite numerous motions by persons named in the report to repress all or portions of it. For this reason, the conferees have determined that additional statutory language encouraging disclosure is unnecessary.[14]

Second, the conference committee modified the proposed changes to section 594(h) (1) (B), retaining (as in the House bill) the language requiring an independent counsel to report "fully and completely," while deleting (as in the Senate bill) the declination clause. The conference explained its decision this way:

> [I]n response to concerns about the proper scope of the final report, the conference agreement retains the requirement in the 1987 law that these reports include a full and complete account of the independent counsel's activities, but eliminates the requirement that the independent counsel explain the reasons for not prosecuting any matter.
>
> . . . .
>
> [Requiring a final report] is justified by the unique environment in which an independent counsel must operate -- without direct and ongoing supervision by senior Justice Department officials. It serves as an important check on independent counsel investigative and prosecutorial activities by requiring them to identify and explain their actions.
>
> . . . .
>
> The conference agreement reaffirms the duty of independent counsels to provide a full and complete description of their work. Congress continues to view this requirement as a key measure for insuring accountability. Under this provision,

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[14] H. Conf. Rep. No. 511, 103d Cong., 2nd Sess. 21 (1994).

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independent counsels are expected to provide a summary of the key steps taken in the investigatory and prosecutorial stages of their work and to explain the basis for their decisions.

. . . .

The conference agreement eliminates the requirement that independent counsels explain, in every instance, their reasons for not prosecuting any matter within their jurisdiction . . . . The power to damage reputations in a final report is significant, and the conferees want to make it clear that the final report requirement is not intended in any way to authorize independent counsels to make public findings or conclusions that violate normal standards of due process, privacy or simple fairness.

The conferees believe that, in assessing whether an explanation should be provided with respect to a specific unindicted individual, an independent counsel should base the decision on whether it would be in the public interest for such information to be disclosed. The public interest encompasses a wide range of concerns which need to be carefully balanced, including understanding the basis for the independent counsel's decision not to indict; taking into account the extent to which the individual was central or peripheral to the independent counsel's jurisdictional mandate; exonerating the innocent; and protecting individual rights to due process, privacy and fairness. For example, it may be in the public interest to report that the evidence did not sustain the allegations that gave rise to the investigation or that the evidence demonstrates an individual's innocence.

With regard to an individual whose conduct was only tangential to that of the person for whom the independent counsel was appointed, an independent counsel should normally refrain from commenting on the reason for not indicting that person unless it is to affirm a lack of evidence of guilt. On the other hand, the conferees consider to be crucial a discussion of the conduct of the person for whom the independent counsel was appointed to office. This discussion should focus on the facts and evidence and avoid use of conclusory statements in the absence of an indictment. However, in the rare event that an indictment is forestalled because of an event beyond the control of the independent counsel, public accountability may well require such independent counsel to express a professional opinion on whether the grounds for an indictment had been present.[15]

With these changes, Congress reauthorized the Ethics in Government Act, which remained in effect until expiration by its own terms on June 30, 1999.

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[15] Id. at 19-20 (emphasis supplied).

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APPENDIX 2

THE FAILURE OF MADISON GUARANTY AND THE SAVINGS & LOAN CRISIS OF THE 1980s AND 1990s

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The investigation and criminal prosecutions spawned by the operation and collapse of Madison Guaranty was, in many ways, representative of what occurred throughout the United States savings and loan industry during the 1980s and early 1990s, when banks and thrifts were failing at a rate not previously seen since the Great Depression in the 1930s.[1] The crisis became so well known that it earned its own title in the media, "the S&L debacle," a phrase that the Federal Deposit Insurance Corporation ("FDIC") adopted.[2] Joseph Neely, the Director of the FDIC, emphasized the widespread bank failures during the period when he said, "Over a 15-year period from 1980 to 1994, a federally insured depository institution failed on an average of every other day."[3] At the height of the crisis, Director Neely continued, a bank or savings institution failed every day. In a single day, institutions holding one-third of the banking assets in New Hampshire closed.[4] In contrast, Neely noted in April 1998 that "[l]ast year, no thrift failed and no thrift has failed in the last 21 months."[5] The total amount of assets held in the 1,295 savings and loan institutions like Madison Guaranty that failed from 1980 to 1994 was $621.2 billion.[6]

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[1] Federal Deposit Insurance Corporation, The FDIC and RTC Experience: Managing the Crisis at 4 (Vol. 1 Aug. 1998) (noting the parallels between the number of banks closed and assets involved between the two periods).

[2] Federal Deposit Insurance Corporation, History of the Eighties -- Lessons for the Future: An Examination of the Banking Crises of the 1980s and Early 1990s at 167 (Dec. 1997).

[3] Id.

[4] Joseph Neely, FDIC Director, Luncheon Address (Apr. 29, 1998), reprinted in Federal Deposit Insurance Corporation, The FDIC and RTC Experience: Managing the Crisis at 41 (Vol. 2 Aug. 1998).

[5] Id.

[6] Federal Deposit Insurance Corporation, The FDIC and RTC Experience: Managing the Crisis at 29 (Vol. 1 Aug. 1998) (Chart I.1-5 "Failed Bank and S&L Assets 1980-1994"); id.

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By 1990, the staggering cost of the S&L debacle was being measured in the clean-up costs that would be borne by every single American household. In May 1990, U.S. Secretary of the Treasury Nicholas F. Brady testified that more than 1,000 savings and loan associations, or forty percent of the industry, would have to be seized by the government at a cost of at least $89 billion to $130 billion, or $1,300 for every American household.[7] Secretary Brady's prediction was dwarfed by that of Charles A. Bowsher, the Comptroller General, who told Congress in the spring of 1990 that "including interest payments, the bailout would cost at least $325 billion, probably much more and possibly as much as $500 billion in the next [forty] years, or $5,000 for each American household."[8] As of December 31, 1995, the costs for cleaning up the savings and loans that failed from 1980 to 1994 stood at $161.40 billion.[9]

The proportional clean-up costs imposed on the American taxpayer by failed Arkansas savings and loans like Madison Guaranty were among the nation's highest. Arkansas had the third highest ratio of resolution costs to savings and loan assets at resolution, or percentage of bail-out costs funded by the American taxpayer that could not be recovered through the failed

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at 795 (Chart C.2 "Number of S&L Failures 1980-1994"); id. at 798 (Chart C.5 "Failed S&L Assets 1980-1994"). A two page chart of Madison Guaranty "Net Worth Comparisons" is attached to this appendix. The chart was prepared by the Office of the Independent Counsel based on Madison Guaranty monthly, quarterly, and semi-annual reports submitted to the FHLBB.

[7] David E. Rosenbaum, The Savings Debacle: A Special Report: A Financial Disaster with Many Culprits, N.Y. Times, June 6, 1990, at A1.

[8] Id.

[9] Federal Deposit Insurance Corporation, The FDIC and RTC Experience: Managing the Crisis at 808 (Vol. 1 Aug. 1998) (Chart C.17 "S&L Resolution Costs by Year of Failure 1980-1994").

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institution's own assets, in the nation, exceeded only by failed institutions in Guam and Texas.[10] For every depositor dollar that had to be covered due to the collapse of an Arkansas savings and loan, 60.44 cents had to be funded by the government because of the deficiency in the value of the remaining assets.[11] The national average was 25.98 cents.[12]

Just as Madison Guaranty's failure was entirely ordinary, so were the causes. The speculative commercial real estate loans and insider fraud found to exist at Madison Guaranty and among its principals and associates were also described as primary causes of failures throughout the thrift industry. L. William Seidman, a former Chairman of both the FDIC and Resolution Trust Corporation ("RTC"), said that "fraud had been found in [sixty] percent of the failed savings institutions and that in half of those, it had been the main element in the institution's demise. Phony appraisals, self-dealing, loans to family and associates, kickbacks and payoffs were rife."[13] The prevalence of fraud was not just Seidman's opinion. "In July 1993, a national commission . . . reported to the president and Congress . . . that there had been 'unprecedented fraud and abuse' by persons connected with failed institutions, although that was not the sole cause of the crisis, and that 'fraud and misconduct were important elements in the savings and loan (S&L) debacle.' The national commission found a 'continuum of abusive practices' ranging from aggressive search for regulatory loopholes to outright fraud by failed

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[10] Id. at 856 (Table C.11 "S&L Failures by Location Ranked by Resolution Costs/S&L Assets 1980-1994).

[11] Id.

[12] Id. at 857.

[13] David E. Rosenbaum, The Savings Debacle: A Special Report: A Financial Disaster with Many Culprits, N.Y. Times, June 6, 1990, at A1.

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institution managers, attorneys, accountants, appraisers, and others. Noting that 'estimates of the actual dollar losses due to fraud and misconduct differ widely,' the national commission concluded 'that taxpayer losses due to fraud were large, probably amounting to [ten to fifteen] percent of total net losses.'"[14]

With fraud rampant, bank regulators routinely referred suspected criminal activity to appropriate authorities for additional investigation and prosecution as appropriate. According to the FDIC, during investigations conducted by bank regulatory agencies, "investigators and attorneys are alert to any evidence of possible criminal wrongdoing. Whenever appropriate, they make criminal referrals to the Justice Department and the FBI. From the 1980s to the early 1990s, many thousands of such referrals were made. After FIRREA's enactment,[15] the FDIC and the RTC set up offices and criminal units dedicated specifically to facilitating the cooperative effort begun by interagency bank fraud working groups."[16]

And just as referrals relating to Madison Guaranty led to the criminal investigations, prosecutions, and convictions discussed in this Final Report, other less publicized referrals did as well. From October 1, 1988 to March 31, 1997, the Department of Justice brought 1,259

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[14] Federal Deposit Insurance Corporation, The FDIC and RTC Experience: Managing the Crisis at 267-68 (Vol. 1 Aug. 1998) (quoting National Commission on Financial Institution Reform, Recovery, and Enforcement, Origins and Causes of the S&L Debacle: A Blueprint for Reform, at ix, 3, 8, 14, 69-71 (July 27, 1993)).

[15] "When Congress passed the landmark Financial Institutions Reform, Recovery, and Enforcement Act of 1989, its primary intent was to address the financial crisis facing the thrift industry, which at the time, included some 600 seriously troubled savings associations with assets of about $350 billion." Federal Deposit Insurance Corporation, The FDIC and RTC Experience: Managing the Crisis at 743 (Vol. 1 Aug. 1998).

[16] Id. at 283-84.

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indictments charging 1,955 defendants with "major" crimes relating to federally regulated savings and loans like Madison Guaranty.[17] The Justice Department obtained the convictions of 1,690 of those defendants, achieving a conviction rate of 93.2%.[18] Of those convicted, 1,149 were sentenced to terms of imprisonment.[19]

One of the other causal factors contributing to thrift failures identified by the FDIC, which was also one of the prevailing problems at Madison Guaranty, was speculative commercial real estate lending:

> Commercial real estate development is inherently risky, partly because of the long gestation period of many commercial construction projects. When completed projects finally come to market, demand conditions may have changed considerably from what they were at the time of conception. . . .
>
> In the early 1980s, booming activity in commercial construction was supported by rapidly increased bank and thrift commercial mortgage lending. . . .
>
> During the 1980s, when total real estate loans of banks more than tripled, commercial real estate loans nearly quadrupled. . . . A pervasive relaxation of underwriting standards took place, unchecked either by the real estate appraisal system or by supervisory restraints. Overly optimistic appraisals, together with the relaxation of debt coverage, of maximum loan-to-value ratios, and of other underwriting constraints, meant that borrowers frequently had no equity at stake, and lenders bore all of the risk.
>
> Overbuilding occurred in many markets, and when the bubble burst, real estate values collapsed. . . . At many financial institutions loan quality deteriorated significantly, and the deterioration caused serious problems. . . .

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[17] U.S. Dep't of Justice, Attacking Financial Institution Fraud, Fiscal Year 1997 (Second Quarterly Report) at 3. "Major" was "defined as (a) the amount of fraud or loss was $100,000 or more, or (b) the defendant was an officer, director, or owner (including shareholder), or (c) the schemes involved multiple borrowers in the same institution, or (d) [the] case involved other major factors." Id.

[18] Id.

[19] Id.

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> [B]anks that failed in the 1980s had higher ratios of commercial real estate loans to total assets than surviving banks. Failing banks also had higher ratios of commercial real estate loans to total real estate loans, or real estate charge-offs to total charge-offs, and of nonperforming real estate assets to total nonperforming assets.[20]

Former FDIC and RTC Chairman L. William Seidman was even more emphatic in pointing the finger of blame for the thrift industry's problems at real estate speculation:

> The critical catalyst causing [financial] institution disruption around the world can be almost uniformly described by three words: real estate loans. In the U.S., the problem was made even worse by allowing S&Ls to make commercial real estate loans in areas they knew little about. They were already in trouble because they borrowed 'short' and lent 'long' in financing the housing market.[21]

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[20] Federal Deposit Insurance Corporation, History of the Eighties -- Lessons for the Future: An Examination of the Banking Crises of the 1980s and Early 1990s at 26-27 (Dec. 1997).

[21] L. William Seidman, The World Financial System: Lessons Learned and Challenges Ahead (Tokyo Sept. 18, 1996), reprinted in Federal Deposit Insurance Corporation, History of the Eighties -- Lessons for the Future: An Examination of the Banking Crises of the 1980s and Early 1990s at 58 (Dec. 1997).

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MADISON GUARANTY
Net Worth Comparisons

	Monthly	Quarterly	Semi Annual	ASSETS	LIABILITIES	NET WORTH	NW to Assets Ratio
	FHLBB Reports						
1/25/82	*McDougal purchased Woodruff S&L*						
Jan-82	x			$3,899,434	$3,817,955	$81,479	2.09%
Feb-82	x			$3,785,592	$3,579,490	$67,529	1.78%
Mar-82	x			$5,040,033	$4,988,384	$51,649	1.02%
Apr-82	x			$5,597,326	$5,556,802	$40,524	0.72%
May-82	x			$5,513,845	$5,483,946	$29,894	0.54%
Jun-82	x			$6,625,243	$6,500,972	$124,271	1.88%
Jul-82	x			$6,714,607	$6,592,670	$121,937	1.82%
Aug-82	x			$7,185,453	$7,069,292	$116,161	1.62%
Dec-82			x	$6,693,985	$6,503,921	$190,064	2.84%
Jun-83	x			$8,840,649	$8,558,954	$281,695	3.19%
Jun-83			x	$8,840,649	$8,558,953	$281,695	3.19%
Aug-83	x			$11,487,738	$10,804,702	$683,036	5.95%
Sep-83	x			$12,465,309	$11,794,767	$670,542	5.38%
Oct-83	x			$13,317,576	$12,745,881	$571,695	4.29%
Nov-83	x			$14,181,655	$13,692,049	$489,606	3.45%
Dec-83	x			$16,952,359	$16,451,411	$500,948	2.96%
Dec-83			x	$16,952,359	$16,451,411	$500,948	2.96%
Jan-84	x			$16,935,563	$16,535,337	$400,226	2.36%
2/22/84	*Little Rock branch opened*						
	x			$18,970,947	$18,524,257	$446,690	2.35%
Mar-84	x			$19,026,143	$18,531,245	$494,898	2.60%
Mar-84	x			$19,091,000	$18,601,000	$490,000	2.57%
Mar-84		x		$19,091,000	$18,601,000	$490,000	2.57%
Apr-84	x			$22,320,000	$21,825,000	$493,000	2.21%
May-84	x			$25,037,311	$24,498,936	$538,375	2.15%
Jun-84	x			$27,487,140	$26,945,170	$541,970	1.97%
Jun-84		x		$27,487,000	$26,945,000	$542,000	1.97%
Jul-84	x			$29,282,002	$26,720,930	$541,072	1.85%
7/18/84	*Supervisory Agreement executed*						
Aug-84	x			$30,022,020	$29,465,476	$556,544	1.85%
Sep-84	x			$32,585,814	$31,998,907	$586,907	1.80%
Sep-84		x		$32,586,000	$31,999,000	$587,000	1.80%
Oct-84	x			$33,829,478	$33,331,854	$497,624	1.47%
Nov-84	x			$41,896,537	$41,382,505	$514,032	1.23%
Dec-84	x			$48,571,029	$47,964,528	$606,501	1.25%
Dec-84		x		$48,571,000	$47,964,000	$607,000	1.25%
Jan-85	x			$57,994,261	$57,325,218	$669,043	1.15%
Feb-85	x			$64,063,056	$63,328,123	$734,933	1.15%
Mar-85	x			$67,085,654	$66,200,506	$885,148	1.32%
Mar-85		x		$67,086,000	$66,201,000	$885,000	1.32%

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MADISON GUARANTY
Net Worth Comparisons

DATE	Monthly	Quarterly	Semi Annual	ASSETS	LIABILITIES	NET WORTH		NW to Assets Ratio
	FHLBB Reports							
4/4/85	MGS&L Fundraiser							
May-85	x			$79,466,960	$78,357,847	$1,109,113		1.40%
Jun-85		x		$81,037,000	$79,889,000	$1,148,000		1.42%
Jul-85	x			$80,593,064	$79,406,553	$1,186,511		1.47%
Aug-85	x			$85,852,908	$84,632,899	$1,220,009		1.42%
Sep-85	x			$83,218,716	$81,966,827	$1,251,889		1.34%
Sep-85		x		$83,219,000	$81,967,000	$1,252,000		1.34%
Oct-85	x					$1,283,000	--	
Dec-85		x		$107,658,000	$105,816,000	$1,842,000		1.71%
Mar-86	x					$2,372,000	--	
Mar-86		x		$116,705,000	$114,333,000	$2,372,000		2.03%
May-86	x					$2,665,000	--	
Jun-86	x					$2,725,000	--	
Jun-86		x		$122,959,000	$120,234,000	$2,725,000		2.22%
7/14/86	Rose Law Firm returned retainer							
Jul-86	x					$2,772,000	--	
Aug-86	x					$2,573,000	--	
Sep-86	x					$2,342,000	--	
Sep-86		x		$126,497,000	$124,155,000	$2,342,000		1.85%
Oct-86	x					$2,075,000	--	
ov-86	x					$1,888,000	--	
Dec-86	x					$2,279,000	--	
Dec-86		x		$125,453,000	$123,174,000	$2,279,000		1.82%
Jan-87	x			$124,254,000	$122,079,000	$2,175,000		1.75%
Feb-87	x			$124,402,000	$122,350,000	$2,052,000		1.65%
Mar-87	x						---	
Mar-87		x		$121,813,000	$119,670,000	$1,743,000		1.43%
Apr-87	x			$120,021,000	$118,608,000	$1,413,000		1.18%
May-87	x			$116,778,000	$115,699,000	$1,079,000		0.92%
Jun-87	x						---	
Jun-87		x		$117,931,000	$117,198,000	$733,000		0.62%
Jul-87	x			$118,198,000	$117,792,000	$406,000		0.34%
Dec-87		x		$110,608,000	$122,794,000	($12,186,000)		-11.02%
Mar-88		x		$116,062,000	$129,213,000	($13,151,000)		-11.31%
May-88	x			$112,836,000	$126,650,000	($13,814,000)		-12.24%
Dec-88		x		$114,697,000	$132,628,000	($17,931,000)		-15.63%

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APPENDIX 3

JURISDICTIONAL GRANTS AND REFERRALS

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This Appendix briefly describes the referrals received by the Independent Counsel.[1] It discusses the scope of jurisdiction, investigative steps, and the results of any investigation conducted.

A review of the evidence leading to the various referrals demonstrates that the overwhelming number of allegations investigated by the Office of the Independent Counsel were originally the subject of investigation by the U.S. Attorney for the Eastern District of Arkansas appointed by President Clinton, the Department of Justice, and finally Robert Fiske, the regulatory Independent Counsel appointed by Attorney General Janet Reno. By the time Independent Counsel Starr was appointed on August 5, 1994, the record of allegations to be investigated had already been thoroughly developed by the combined efforts of the Department of Justice and the regulatory Independent Counsel.

The formal law enforcement investigations -- eventually leading to the Office of the Independent Counsel's jurisdiction over matters covered in the main body of the Final Report began in August 1992 when the Resolution Trust Corporation ("RTC") referred allegations of criminal activity to the U.S. Attorney for the Eastern District of Arkansas. These investigations related to the administration of the Madison Guaranty Savings & Loan Association ("Madison

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[1] This does not include referrals to the Independent Counsel that have or will likely be addressed in separately filed Final Reports, including: Final Report of the Independent Counsel (In re: Madison Guaranty Sav. & Loan Ass'n) In re: William David Watkins and In re: Hillary Rodham Clinton, (published Oct. 18, 2000) (reporting on matters commonly referred to as the "Travel Office" investigation); Final Report of the Independent Counsel (In re: Madison Guaranty Savings & Loan Ass'n) In re: Anthony Marceca, (July 28, 2000) (reporting on a matter commonly referred to as the "FBI Files" matter); Final Report of the Independent Counsel (In re: Madison Guaranty Sav. & Loan Ass'n), and In re: Bernard Nussbaum, (July 28, 2000) (reporting on a matter related to the FBI Files matter); Report on the Death of Vincent W. Foster Jr. (Oct. 10, 1997).

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Guaranty"), a defunct Arkansas savings and loan controlled by Jim McDougal. McDougal had also been a partner in a real estate venture known as the Whitewater Development Company, Inc. ("Whitewater Development") with then-Governor and Mrs. Clinton.[2]

Following the 1992 election, Paula Casey, the U.S. Attorney for the Eastern District of Arkansas appointed by President Clinton, inherited the original RTC referral and nine additional referrals of criminal activity relating to Madison Guaranty.[3] U.S. Attorney Casey was involved in prosecuting Arkansas municipal court judge David Hale for defrauding the Small Business Administration ("SBA") through his investment company, Capital Management Services, Inc. (a small business investment company licensed by the SBA) ("CMS").[4] During plea negotiations, Hale made a number of allegations of criminal activity by McDougal and the Clintons, among others, through the misuse of CMS funds.[5]

In November 1993, the U.S. Department of Justice's Criminal Division took over the prosecution of Hale, as well as the investigation into the RTC's allegation of misapplication of Madison Guaranty funds, after U.S. Attorney Casey recused herself from further investigation based on her personal relationships with those under investigation, including McDougal and the

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[2] See Application of Attorney General Janet Reno to the Court Pursuant to 28 U.S.C. § 592(c) (1) for the Appointment of an Independent Counsel at 1, In re: Madison Guaranty Sav. & Loan Ass'n, (D.C. Cir. [Spec. Div.] July 1, 1994).

[3] Casey 5/10/95 Int. at 1-4, 11.

[4] See Application of Attorney General Janet Reno to the Court Pursuant to 28 U.S.C. § 592(c) (1) for the Appointment of an Independent Counsel at 1, In re: Madison Guaranty Sav. & Loan Ass'n, (D.C. Cir. [Spec. Div.] July 1, 1994); see also Final Report of Robert B. Fiske Jr., Independent Counsel, In re: Madison Guaranty Savings and Loan Association at 15 (D.C. Cir. [Spec. Div.] (Oct. 6, 1994) (under seal) [hereinafter "Fiske Report"].

[5] See Application of Attorney General Janet Reno to the Court Pursuant to 28 U.S.C. § 592(c) (1) for the Appointment of an Independent Counsel at 1, In re: Madison Guaranty Sav. &

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Clintons.[6]

A. Investigation of Madison Guaranty under Regulatory Independent Counsel Robert Fiske.

On January 20, 1994, Attorney General Janet Reno appointed Robert B. Fiske Jr. as regulatory Independent Counsel to investigate matters commonly referred to as "Whitewater."[7] By Final Rule dated January 31, 1994,[8] the Attorney General defined Fiske's jurisdiction as follows:

> (a) The Independent Counsel: In re Madison Guaranty Savings & Loan Association shall have jurisdiction and authority to investigate to the maximum extent authorized by part 600 of this chapter whether any individuals or entities have committed a violation of any federal criminal or civil law relating in any way to President William Jefferson Clinton's or Mrs. Hillary Rodham Clinton's relationship with:
>
> (1) Madison Guaranty Saving & Loan Association;
> (2) Whitewater Development Corporation; or
> (3) Capital Management Services.
>
> (b) The Independent Counsel: In re Madison Guaranty Savings & Loan Association shall have jurisdiction and authority to investigate other allegations or evidence of violation of any federal criminal or civil law by any person or entity developed during the Independent Counsel's investigation referred to above, and connected with or arising out of that investigation.
>
> (c) The Independent Counsel: In re Madison Guaranty Savings & Loan Association shall have jurisdiction and authority to investigate any violation of section 1826 of title 28 of the U.S. Code, or any obstruction of the due administration of justice, or any material false testimony or statement in violation

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Loan Ass'n, (D.C. Cir. [Spec. Div.] July 1, 1994).

[6] See id. at 2; Casey 6/1/95 Int. at 1; Casey 5/10/95 Int. at 12-14.

[7] See Application of Attorney General Janet Reno to the Court Pursuant to 28 U.S.C. § 592(c) (1) for the Appointment of an Independent Counsel at 2, In re: Madison Guaranty Sav. & Loan Ass'n, (D.C. Cir. [Spec. Div.] July 1, 1994).

[8] Jurisdiction of the Independent Counsel: In re: Madison Guaranty Sav. & Loan Ass'n, at 28 C.F.R. § 603.1 (1994).

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of federal law, in connection with any investigation of the matters described in paragraph (a) or (b) of the this section.

(d) The Independent Counsel: In re Madison Guaranty Savings & Loan Association shall have jurisdiction and authority to seek indictments and to prosecute, or to bring civil actions against, any person or entities involved in any of the matters referred to in paragraph (a), (b), or (c) of this section who are reasonably believed to have committed a violation of any federal criminal or civil law arising out of such matters, including persons or entities who have engaged in an unlawful conspiracy or who have aided or abetted any federal offense.

Fiske conducted a broad investigation. Allegations of criminality forming the core of his investigation would be inherited by this Office. Fiske noted in his own report that his office likewise

inherited an existing investigation in Little Rock from a team of DOJ attorneys. Their investigation broke down into three basic subject areas. The first area involved President and Mrs. Clinton's relationships with Whitewater and Madison Guaranty. Initially, this area consisted of three principal issues:

(1) Whether funds were diverted from Madison Guaranty for the benefit of Whitewater;

(2) Whether funds were diverted from Madison Guaranty for the benefit of President Clinton's gubernatorial campaigns in the 1980s; and

(3) Whether the Clintons were offered a fifty percent ownership interest in Whitewater by James McDougal without any, or with only a minimal, financial contribution in return for some quid pro quo and, if so, whether the quid pro quo was that then-Governor Clinton, directly or indirectly, allowed Madison Guaranty to remain open after it became insolvent.[9]

Some of these allegations were raised in RTC criminal referrals that had been transmitted to the FBI in Little Rock and to the U. S. Attorney for the Eastern District of Arkansas in October 1993.[10]

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[9] Fiske Report, supra note 4, at 13-14.

[10] Id. at 13-14.

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The second subject area involved the investigation of allegations made by David L. Hale, a former municipal judge in Little Rock and the former President of CMS.[11] According to press accounts, Hale alleged in the fall of 1993 that in 1986, then-Governor Clinton and James McDougal pressured Hale to arrange a CMS loan worth $300,000 to Master Marketing, a business owned and controlled by McDougal's wife, Susan.[12] It was further alleged that Mr. Clinton and Mr. McDougal caused a portion of the proceeds from the $300,000 loan to be improperly diverted to their joint real estate enterprise, Whitewater.[13] The investigation also included whether Hale had agreed to make the $300,000 Master Marketing loan, as well as several other loans, in return for $502,000, which would be used to recapitalize CMS.[14] This represented the net proceeds of a fraudulent $825,000 loan from Madison Guaranty.[15]

The third area of the investigation involved the remaining allegations in the ten criminal referrals received from the RTC.[16] By January 1994, FBI personnel in Little Rock had begun to organize and investigate the RTC's allegations relating to Madison Guaranty.[17] Generally, these referrals alleged a broad range of criminal conduct at Madison Guaranty on the part of James

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[11] Id.

[12] Id. at 14.

[13] Id. at 14-15.

[14] Id. at 15.

[15] Id.

[16] Id.

[17] Id.

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McDougal, Susan McDougal, and other Madison Guaranty insiders.[18] Two referrals alleged possible criminal violations involving Arkansas Governor Jim Guy Tucker.

> [Fiske's] Office immediately assumed responsibility for all aspects of the DOJ investigation described above. In addition, because of Hale's status as a key witness in that investigation, the Office took over the prosecution of United States v. David L. Hale, Charles Matthews, and Eugene Fitzhugh. This case had been indicted in September 1993 and was scheduled for trial in March 1994.[19]

The broad areas of investigation within Fiske's jurisdiction were not original to his Office, but were actually investigations begun by the Department of Justice and the U.S. Attorney for the Eastern Division of Arkansas appointed by the President.

Other matters investigated by Fiske included:

- Contacts between and among White House, United States Department of the Treasury, and RTC officials on the subject of the RTC's investigation into Madison Guaranty, determining whether any of the participants in the contacts acted with the intent to obstruct justice;[20]

- Whether an official within the RTC or the Department of Justice took any action to obstruct the ongoing RTC investigation into Madison Guaranty;[21]

- The handling and removal of documents in White House Deputy Counsel Vincent J. Foster Jr.'s office by White House officials immediately following his July 20, 1993 death;[22]

- Whether Chris Wade engaged in bankruptcy fraud by failing to disclose in bankruptcy filings that he owned Whitewater Lot 7, previously reserved for purchase by Governor Clinton, during Wade's personal bankruptcy proceedings;[23]

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[18] Id.

[19] Id. at 13-15.

[20] Id. at 13.

[21] Id.

[22] Id. at 13, 21-30.

[23] Id. at 53.

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- Whether the Rose Law Firm destroyed materials relevant to the grand jury's investigation of Whitewater Development and related matters;[24]

- Whether Webster Hubbell engaged in fraudulent billing practices while a partner at the Rose Law Firm;[25]

- Whether any violations of federal criminal law occurred in connection with then-Governor Clinton's 1990 campaign for re-election;[26]

- Whether Arkansas Governor Jim Guy Tucker and others committed bank fraud and criminal tax violations in connection with the acquisition and resale of certain cable television systems;[27]

- Whether real estate appraisers who regularly worked for Madison Guaranty, including Robert Palmer and George Betts, committed any federal crimes in connection with such work;[28]

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[24] Id. at 16, 33-35.

[25] Id. at 16. This aspect of Fiske's investigation arose in April, 1994, when a confidential witness "stated that Hubbell had over billed the Federal Deposit Insurance Corporation ("FDIC") and the RTC in connection with the Rose Law Firm's representation of the FDIC and RTC in a lawsuit against Frost & Co., a Little Rock accounting firm. . . . The Office concluded that there were substantial questions raised regarding Hubbell's billing practices." Id. at 41.

[26] Id. at 16, 50-51. Fiske explained that while investigating "whether MGS&L funds were diverted to campaigns conducted by President Clinton or Whitewater, certain issues arose regarding transactions involving the 1990 Clinton campaign account at the Perry County Bank. This led to an investigation of two possible federal criminal violations involving the 1990 gubernatorial campaign account at the Perry County Bank." Id. at 50. These included the failure to file Currency Transaction Reports and whether certain withdrawals from the bank occurring four days before the 1990 primary and general elections were for the purpose of providing cash illegally to influence those elections. Id. at 50.

[27] Id. at 16, 45-49. Fiske examined whether Tucker and William J. Marks engaged in several possible frauds relating to the bankruptcy action In re: Landowners Management Systems, Inc., United States Bankruptcy Court, Northern District of Texas, Case No. 787-70392 (Nov. 30, 1987), and whether they committed reporting and non-filing tax violations. Id. at 46. Fiske also investigated RTC Criminal Referral 730 CR 0190, which alleged that Jim Guy Tucker misapplied a portion of the proceeds of a $260,000 Madison Guaranty loan to purchase a 34-acre tract of land from Madison Guaranty's wholly owned subsidiary, Madison Financial Corporation ("Madison Financial"), in the Castle Grande development for $125,000. Id. at 49.

[28] Id. at 16, 51-53.

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- Whether Jim McDougal and others engaged in a series of fraudulent sales of a single tract of commercial real estate as alleged in RTC Criminal Referral 730CR0198, and whether McDougal and others misused loan proceeds from those sales;[29]

- Whether Jim McDougal used a nominee borrower to conceal his ownership of a lot and house ("Lot 747") in Madison Financial Corporation's ("Madison Financial") Maple Creek Farms project, and diverted proceeds for his personal benefit;[30]

- Whether Jim McDougal used Whitener and Associates, Madison Financial's investment partner in the Gold Mine Springs project, to obtain loans from Madison Guaranty and then fraudulently diverted those loan proceeds for his personal benefit, and whether McDougal and other Madison Guaranty insiders schemed to conceal Madison Financial's interest in the partnership from Federal Home Loan Bank Board ("FHLBB") examiners in connection with the 1986 FHLBB examination of Madison Guaranty;[31]

- Whether a group of Madison Guaranty insiders, including Jim McDougal, John Latham, Pat Harris, and Bill Henley, generated a series of fictitious sales of property in Madison Financial's land developments for the purpose of generating (a) higher commissions for Madison Financial salesmen and (b) improper bonuses for Jim McDougal and John Latham; [32]

- Whether Seth Ward fraudulently agreed with McDougal and others at Madison Guaranty to hold certain real estate in his name for the purpose of misleading FHLBB examiners, and whether McDougal caused Madison Financial to compensate Ward with inflated commission income in return; [33]

- Whether Jim McDougal, Robert Wilson, and others participated in a scheme whereby Madison Guaranty loans were issued to Wilson who thereafter diverted some or all of the proceeds to Madison Financial; and whether McDougal and Wilson entered into this arrangement to allow Madison Guaranty to advance

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[29] Id. at 54.

[30] Id. at 16-17, 54-55.

[31] Id. at 17, 55.

[32] Id. at 17, 57.

[33] Id. at 17.

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money to Madison Financial beyond what was permitted by law; [34]

- Whether then-Governor Clinton arranged for various political supporters and contributors to receive bond underwriting and bond counsel business in connection with bonds issued by the Arkansas Development Finance Authority; [35]

- Whether funds obtained from individuals, businesses, and loans from financial institutions that were deposited in accounts established by Governor Clinton for what purported to be programs to promote his legislative agenda, were improperly diverted for use in political activities, including federal political campaigns or exploratory activities, and whether there was any diversion of these funds to Whitewater Development; [36]

- Whether Jim and Susan McDougal diverted Madison Guaranty funds to pay for expenditures on their home;[37] and

- Whether Governor Clinton arranged for political supporters and contributors to receive bond underwriting and bond counsel business in connection with bonds issued by the Arkansas Development Finance Authority, including Dan Lasater.[38]

Fiske's investigation led to David L. Hale's guilty plea on March 22, 1994, to one felony violation of 18 U.S.C. § 371 (conspiracy), and one felony violation of 18 U.S.C. §§ 1341 & 2 (mail fraud).[39] Hale admitted to having engaged in a conspiracy to defraud the SBA of $900,000, and in a course of conduct from 1985 through 1991 in which he caused CMS to make loans to various individuals and entities in order to improperly benefit himself and various other people.[40]

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[34] Id. at 17-18.

[35] Id. at 18.

[36] Id. at 18.

[37] Id. at 58.

[38] Id. at 60-61; Fiske noted that press accounts reported that the Rose Law Firm and Dan Lasater were among the beneficiaries. Id. at 60.

[39] Tr. at 2-30, United States v. David L. Hale, No. LR-CR-93-147 (E.D. Ark. Mar. 22, 1994).

[40] Fiske Report, supra note 4, at 32.

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On March 25, 1996, Hale was sentenced to twenty-eight months in prison; three years supervised release, a $10,000 fine, and restitution in the amount of $2,040,000.[41]

Charles Matthews pleaded guilty on June 23, 1994, to two misdemeanor violations of 18 U.S.C. § 215 (receipt of gifts), and on January 3, 1995, was sentenced to sixteen months in prison.[42]

Eugene Fitzhugh pleaded guilty on June 23, 1994, to one misdemeanor violation of 18 U.S.C. § 215 (receipt of gifts).[43] On January 3, 1995, he was initially sentenced to one year in prison, followed by one year of supervised release.[44] Following appeal, Fitzhugh was re-sentenced to ten months in prison.[45] In light of further appeals and health problems, on December 22, 1999, the Court further altered Fitzhugh's sentence to five months in a Bureau of Prisons halfway house, to be followed by five months of home detention, and then one year of supervised release.[46]

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[41] Tr. at 35, United States v. David L. Hale, No. LR-CR-93-147 (E.D. Ark. Mar. 29, 1996).

[42] United States v. Charles Matthews, No. LR-CR-93-147 Docket No. 126 (E.D. Ark. Jan. 8, 1995).

[43] Superseding Information, United States v. David L. Hale, et al., No. LR-CR-93-147 (E.D. Ark. June 23, 1995).

[44] United States v. Eugene Fitzhugh, No. LR-CR-93-147 Docket No. 124 (E.D. Ark. Jan. 3, 1995)

[45] Judgment, United States v. Eugene Fitzhugh, No. LR-CR-93-147 Docket No. 271 (E.D. Ark. Jan. 3, 1995).

[46] Amended Judgment, United States v. David L. Hale, et al., No. LR-CR-93-147 (E.D. Ark. Dec. 15, 1999).

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B. Continued Madison Guaranty Investigation under Statutory Independent Counsel Kenneth W. Starr.

After the June 30, 1994 enactment of the Independent Counsel Reauthorization Act of 1994, the Attorney General applied to the United States Court of Appeals for the District of Columbia Circuit, Division for the Purpose of Appointing Independent Counsels ("Special Division"), for the appointment of an independent counsel to pursue the matters then under investigation by Independent Counsel Fiske.[47] Although the Attorney General requested the Special Division to appoint Fiske as the statutory Independent Counsel, to continue his investigation,[48] on August 5, 1994, acting pursuant to its authority under 28 U.S.C. § 593(b), the Special Division declined the Attorney General's suggestion and instead appointed Kenneth W. Starr as Independent Counsel In re: Madison Guaranty Savings & Loan Association. The Special Division said Judge Starr's appointment was not "inten[ded] to impugn the integrity of the Attorney General's appointee [Fiske], but rather to reflect the intent of the Act that the actor be protected against perceptions of conflict."[49]

1. Original Jurisdiction.

Judge Starr, who was sworn into office on August 9, 1994, was granted jurisdiction:

> to investigate . . . whether any individuals or entities have committed a violation of any federal criminal law, other than a Class B or C misdemeanor or infraction, relating in any way to James B. McDougal's, President William Jefferson Clinton's, or Mrs. Hillary Rodham Clinton's relationships with Madison Guaranty

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[47] See Application of Attorney General Janet Reno to the Court Pursuant to 28 U.S.C. § 592(c) (1) for the Appointment of an Independent Counsel, In re: Madison Guaranty Sav. & Loan Ass'n, (D.C. Cir. [Spec. Div.] July 1, 1994).

[48] Id. at 4.

[49] Order Appointing Independent Counsel at 4, In re: Madison Guaranty Sav. & Loan Ass'n, (D.C. Cir. [Spec. Div.] Aug. 5, 1994).

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Savings & Loan Association, Whitewater Development Corporation, or Capital Management Services, Inc.[50]

Additionally, the Court's order said the Independent Counsel had "jurisdiction to investigate other allegations or evidence of violation of any federal criminal law, other than a Class B or C misdemeanor or infraction, by any person or entity developed during the Independent Counsel's investigation referred to above and connected with or arising out of that investigation."[51]

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[50] Id. at 1-2

[51] Id. at 2. The Court's Order further provided that the Independent Counsel has:

> jurisdiction and authority to investigate any violation of 28 U.S.C. § 1826, or any obstruction of the due administration of justice, or any material false testimony or statement in violation of federal criminal law, in connection with any investigation of the matters described above.

Id. at 2. The Court's Order also provided that the Independent Counsel, in addition to investigative authority,

> shall have jurisdiction and authority to seek indictments and to prosecute any person or entities involved in any of the matters described above, who are reasonably believed to have committed a violation of any federal criminal law arising out of such matters, including person or entities who have engaged in an unlawful conspiracy or who have aided or abetted any federal offense.

Id. at 2-3. Finally, according to the Court's Order, the Independent Counsel's authority includes:

> prosecutorial jurisdiction to fully investigate and prosecute the subject matter with respect to which the Attorney General requested the appointment of independent counsel, as hereinbefore set forth, and all matters and individuals whose acts may be related to that subject matter, inclusive of authority to investigate and prosecute federal crimes (other than those classified as Class B or C misdemeanors or infraction) that may arise out of the above described matter, including perjury, obstruction of justice, destruction of evidence, and intimidation of witnesses.

Id. at 3.

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2. Investigations under Original Jurisdiction.

The Independent Counsel's full investigation and conclusions about the matters referred in the above Order are covered in detail within the body of the Final Report. For the "Arkansas Phase" of the Independent Counsel's investigation of the matters assigned to the Independent Counsel on August 5, 1994, namely " whether any individuals or entities have committed a violation of any federal criminal law, . . . relating in any way to James B. McDougal's, President William Jefferson Clinton's, or Mrs. Hillary Rodham Clinton's relationships with Madison Guaranty Savings & Loan Association, Whitewater Development Corporation, or Capital Management Services, Inc.," the Independent Counsel conducted three jury trials and convicted three defendants. The Office also secured fourteen convictions of twelve defendants by guilty plea.

On March 4, 1996, the first of these trials, United States v. James B. McDougal, Susan McDougal, and Jim Guy Tucker, commenced before Judge George Howard Jr., in the United States District Court for the Eastern District of Arkansas. On May 28, 1996, the jury returned guilty verdicts against all three defendants.

- James B. McDougal was convicted on eighteen felony counts: one count of conspiracy in violation of 18 U.S.C. § 371; two counts of wire fraud in violation of 18 U.S.C. § 1343; one count of bank fraud in violation of 18 U.S.C. § 1344; three counts of mail fraud in violation of 18 U.S.C. § 1341; one count of false bank entries in violation of 18 U.S.C. § 1006; three counts of false loan applications in violation of 18 U.S.C. §§ 2 & 1014; four counts of misapplication of bank funds in violation of 18 U.S.C. §§ 2 & 657; and three felony counts of false bank entries in violation of 18 U.S.C. §§ 2 & 1006.[52] McDougal was sentenced to concurrent terms of five years imprisonment for fifteen of the counts

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[52] Tr. at 8117-20, United States v. James B. McDougal, et al., No. LR-CR-95-173 (E.D. Ark. May 28, 1996).

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upon which he was convicted, with two years suspended.[53] On the remaining three counts, imposition of sentence was suspended in lieu of three years' probation.[54] McDougal was fined $10,000, and ordered to pay $4,274,301.27 restitution divided between the Federal Deposit Insurance Corporation and the Small Business Administration.[55] McDougal died while incarcerated on March 8, 1998, of natural causes.[56]

- Susan McDougal was convicted on four felony counts: one count of mail fraud in violation of 18 U.S.C. § 1341; one count of misapplication of bank funds in violation of 18 U.S.C. §§ 2 & 657; one count of false bank entries in violation of 18 U.S.C. §§ 2 & 1006; and one count of false loan applications in violation of 18 U.S.C. §§ 2 & 1014.[57] McDougal was sentenced to twenty-four months on three counts of conviction (the court suspended sentence on the fourth count), followed by three years of probation; restitution of $300,000; a $5,000 fine; and 300 hours of community service.[58]

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[53] Sentencing Hearing of Jim McDougal at 40, United States v. James B. McDougal, et al., No. LR-CR-95-173 (E.D. Ark. Apr. 14, 1997).

[54] Id.

[55] Id. at 41.

[56] Pete Yost, Whitewater Figure Jim McDougal Dies, A.P., Mar. 9, 1998.

[57] Tr. at 8121-22, United States v. James B. McDougal, et al., No. LR-CR-95-173 (E.D. Ark. May 28, 1996).

[58] Sentencing Hearing of Susan McDougal at 86, United States v. Susan H. McDougal, No. LR-CR-95-173 Docket No. 709 (E.D. Ark. Aug 20, 1996). Susan McDougal's appeal of her conviction and sentence was denied by the United States Court of Appeals for the Eighth Circuit. United States v. McDougal, 137 F.3d 547 (8th Cir. 1998). United States District Judge Susan Webber Wright had found McDougal in contempt based on McDougal's refusal to respond to the grand jury about Madison Guaranty and Whitewater Development. Though McDougal could have purged her contempt by testifying, she refused to do so. Order, In re: Grand Jury Subpoena, No. GJ-96-3 (E.D. Ark. Sept. 6, 1996). On June 25, 1998, after McDougal had served three and one-half months of her 24 month criminal sentence, Judge Howard commuted McDougal's criminal sentence to time served, whereupon she served a 90 day period of home confinement as a condition of probation. Order, United States v. Susan McDougal, No. LR-CR-95-173 Docket No. 777 (E.D. Ark. June 25, 1998).

On May 4, 1998, Susan McDougal was indicted on two counts of criminal contempt in violation of 18 U.S.C. § 402, and one count of obstruction of justice in violation of 18 U.S.C. § 1503. United States v. Susan H. McDougal, No. LR-CR-98-82, Docket No. 2 (E.D. Ark. May 4, 1998). Trial began on March 8, 1999, with Judge Howard presiding. Clerk's Minutes, United States v. McDougal, No. LR-CR-98-82 (E.D. Ark. Mar. 8, 1999). On April 12, 1999, the jury returned a verdict of not guilty of obstruction, and deadlocked on the two counts of criminal

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- Jim Guy Tucker was convicted on two felony counts: one count of conspiracy in violation of 18 U.S.C. § 371; and one count of mail fraud in violation of 18 U.S.C. § 1341.[59] Tucker was sentenced to eighteen months of home confinement as part of a four year probationary term; restitution of $150,000; a $25,000 fine; and specified community service.[60]

There were also convictions resulting from guilty pleas relating to this aspect of the Independent Counsel's jurisdiction. Robert W. Palmer pleaded guilty on December 5, 1994, to one felony violation of 18 U.S.C. § 371 (conspiracy), and was sentenced to three years probation, including home detention with electronic monitoring the first year, and a $5,000 fine.

Stephen Smith pleaded guilty on June 8, 1995 to one misdemeanor violation of 18 U.S.C. § 371 (conspiracy), and was sentenced to one year probation, a $1,000 fine, and 100 hours community service.

Larry E. Kuca pleaded guilty on July 13, 1995, to one misdemeanor violation of 18 U.S.C. § 371 (conspiracy), and was sentenced to two years probation, 80 hours of community service, and ordered to pay restitution in the amount of $65,862.

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contempt. Judge Howard declared a mistrial on the contempt counts, and on May 25, 1999, the Independent Counsel filed a motion to dismiss the remaining counts in the indictment. United States v. McDougal, No. LR-CR-98-82 Docket No. 135 (E.D. Ark. May 25, 1999).

[59] Tr. at 8120-21, United States v. Jim Guy Tucker, No. LR-CR-95-173 (E.D. Ark. Aug. 20, 1996).

[60] United States v. James B. McDougal, et al., No. LR-CR-95-173 Docket No. 708 (E.D. Ark. Aug. 20, 1996). Tucker's appeal challenging the sufficiency of the evidence against him was denied by the United States Court of Appeals for the Eighth Circuit, though that Court did remand the matter for further proceedings on Tucker's claim of juror misconduct. United States v. Tucker, 137 F.3d 1016 (8th Cir. 1998). Following extensive evidentiary hearings on that issue, on February 17, 1999, Judge Howard denied the juror misconduct claim, which Tucker again appealed. On February 27, 2001, the Eighth Circuit upheld Jim Guy Tucker's conviction.

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3. RTC Referrals Relating to Madison Guaranty Savings & Loan.

As discussed more generally above in describing the jurisdictional mandates assigned first to regulatory Independent Counsel Fiske and then statutory Independent Counsel Starr, most of the allegations falling within the core of their jurisdiction had their genesis in the RTC's investigation into the collapse of Madison Guaranty. The allegations developed and referred to the Office of the Independent Counsel by the RTC are described in further detail in this subsection.

a. The Ten Original RTC Criminal Referrals to the U.S. Attorney for the Eastern District of Arkansas.

During the period August 31, 1992 through September 23, 1993, the RTC completed ten criminal referrals relating to Madison Guaranty. The first was forwarded directly to the FBI Office in Little Rock, Arkansas, and the U.S. Attorney for the Eastern District of Arkansas in early September 1992. The other nine were forwarded to their offices on October 8, 1993, after being reviewed by RTC officials in Washington, D.C. After Clinton-appointed U.S. Attorney Paula Casey recused herself on November 3, 1993,[61] the matters were assigned to attorneys in the Justice Department's Criminal Division. Regulatory Independent Counsel Fiske assumed responsibilities for the investigation of these referrals upon his appointment on January 20, 1994. Independent Counsel Starr inherited these investigations when he assumed the Office of the Independent Counsel from Fiske. The results are described briefly below.[62]

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[61] Casey 6/1/95 Int. at 1.

[62] For Fiske's discussion of his own investigations of these ten referrals, see Fiske Report, supra note 4, at 49, 56-57.

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i. RTC Criminal Referral No. C-0004 (August 31, 1992).[63]

In this referral, the RTC alleged that between December 1984 and May 1985, Madison Guaranty insiders Jim McDougal (Madison Guaranty President), Susan McDougal (wife of Jim McDougal), and Lisa Anspaugh (Madison Guaranty employee) by various means defrauded Madison Guaranty of $350,000 to $1 million.[64] The possible crimes alleged to have been committed were check kiting, misuse of position, bank fraud, forgery, and conspiracy.

The FBI established a database tracking the funds in the various accounts at issue, revealing the accounts were frequently overdrafted by checks written between the accounts, or to Jim and Susan McDougal and their friends, associates, and family members.[65] In some instances "loans" would be issued from Madison Guaranty to an overdrawn account's possessor (often McDougal-related) to cover the deficit, with no evidence in many instances that the "loans" from Madison Guaranty to the overdrawn accounts were ever paid back.[66]

ii. RTC Criminal Referral No. 730CR0198 (August 4, 1993).

The RTC alleged in this referral that Jim McDougal, Jim Guy Tucker, Susan McDougal, Lisa Anspaugh, and Bill Henley may have engaged in bank fraud, misuse of position, false statements, and conspiracy.[67] The RTC alleged that from February 1984 through January 1986,

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[63] The cover page to this referral identifies it as Criminal Referral # C-0004, which is the number assigned to it under the RTC's system. A presumably typographical error appears in the header on the succeeding 13 pages following the cover page, where the matter is erroneously identified as Criminal Referral C0001. The Independent Counsel and all other entities reviewing this referral, have identified this referral by the C-0004 on the cover page.

[64] RTC Crim. Ref. No. C-0004 (Aug. 31, 1992).

[65] Id.

[66] Id.

[67] RTC Crim. Ref. No. 730CR0198 at 1-6 (Aug. 4, 1993).

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Madison Guaranty insiders and close associates, including Jim McDougal, Jim Guy Tucker, Lisa Anspaugh, and Bill Henley, sold among themselves a property located at 1308 Main Street, Little Rock, Arkansas, at fraudulently inflated prices in order to generate profits for the participants in the land flip scheme.[68]

The Independent Counsel's investigation led to Jim McDougal's August 17, 1995 indictment by the grand jury in the United States District Court for the Eastern District of Arkansas, in which counts seventeen through nineteen were based on the allegations in this referral.[69] McDougal was convicted on all three counts of misapplying Madison Guaranty funds in violation of 18 U.S.C. § 657.[70] No other charges against any other person were filed based on the allegations in the referral.

iii. RTC Criminal Referral No. 730CR0190 (August 12, 1993).

The possible crimes alleged in this referral included false statements, misuse of position, bank fraud, and conspiracy by named suspects Jim McDougal, Jim Guy Tucker, John Latham, and Don Denton.[71] The RTC alleged that Jim Guy Tucker misapplied proceeds from a $260,000 Madison Guaranty loan obtained by Tucker to purchase thirty-four acres in a Madison Financial real estate development known as Castle Grande. Tucker allegedly diverted a portion of the proceeds to pay off an unrelated real estate debt he owed.[72]

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[68] Id. at 7-8.

[69] Indictment at 41-43, United States v. James B. McDougal, et al., No. LR-CR-95-173 (E.D. Ark. Aug. 17, 1995).

[70] United States v. James B. McDougal, et al., No. LR-CR-95-173 Docket No. 600 (E.D. Ark. May 28, 1996).

[71] RTC Crim. Ref. No. 730CR0190 at 1-5 (Aug. 12, 1993).

[72] Id. at 6-7.

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The allegations within the referral served as the basis for one of the overt acts in furtherance of the conspiracy charged against Tucker and the McDougals,[73] which resulted in the convictions of Tucker and McDougal for engaging in an unlawful conspiracy in violation of 18 U.S.C. § 371.[74] The loan could not, however, be charged as an independent substantive offense because the Independent Counsel's investigation did not reveal any documentary evidence reflecting the represented purpose for the loan when it was made.

iv. RTC Criminal Referral No. 730CR0192 (August 13, 1993).

The RTC alleged in this referral that suspects Jim McDougal and former U.S. Senator J. W. Fulbright may have committed the crimes of false statements, misuse of position, bank fraud, embezzlement, and money laundering.[75] The RTC alleged that Jim McDougal covered $50,000 in overdrafts on his personal checking accounts as well as on the Whitewater Development accounts at Madison Guaranty, by having the savings and loan pay him a fraudulent bonus and disbursing him a non-existent loan.[76] President and Mrs. Clinton were named as witnesses with possible information because of their association with McDougal as partners in Whitewater Development.[77] The $50,000 allegedly went to Senator Fulbright through two cashiers checks made payable to him in the amounts of $30,000 and $20,000.[78] The RTC noted that Senator

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[73] See Indictment at 41-43 (Counts 17-19), United States v. James B. McDougal, et al., No. LR-CR-95-173 (E.D. Ark. Aug. 17, 1995).

[74] United States v. James B. McDougal, et al., No. LR-CR-95-173 Docket No. 600 (E.D. Ark. May 28, 1995).

[75] RTC Crim. Ref. No. 730CR0192 at 1-3 (Aug. 13, 1993).

[76] Id. at 4.

[77] Id. at 6.

[78] Id. at 4.

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Fulbright's endorsement did not appear to be in his handwriting, but rather McDougal's.[79]

No charges were brought by the Independent Counsel based on the allegations in this referral. The evidence of McDougal's criminal intent was contradictory at best, including evidence showing he was lawfully entitled to an even larger bonus than the allegedly fraudulent one that Madison Guaranty paid.[80] The Independent Counsel determined as a matter of prosecutorial discretion that the activity charged against McDougal in the August 17, 1995 indictment was more likely to result in his conviction.

v. RTC Criminal Referral No. 730CR0195 (August 15, 1993).

The RTC alleged in this referral that Jim McDougal, Susan McDougal, John Latham, Greg Young, and Bill Henley may have committed the crimes of false statements, misuse of position, conspiracy, and bank fraud.[81] The RTC alleged that from January 1985 through March 1986, the suspects abused their positions as Madison Guaranty officers, directors, and insiders to divert money from Madison Guaranty for their own personal benefit by creating business entities that received operational funding from Madison Guaranty, but for which Madison Guaranty accrued no benefit.[82] The alleged loss to Madison Guaranty was $8,932,900.[83]

After a thorough investigation, the Independent Counsel determined the evidence presented was insufficient to prove beyond a reasonable doubt that the suspects committed any federal criminal violations relating to the allegations in the referral.

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[79] Id. at 4-5.

[80] Young 12/15/94 Int. at 5-6; Hays 1/13/95 Int. at 1-3.

[81] RTC Crim. Ref. No. 730CR0195 at 1-7 (Aug. 15, 1993).

[82] Id. at 8-11.

[83] Id. at 15.

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vi. RTC Criminal Referral No. 730CR0196 (August 18, 1993).

Those suspected of criminal activity according to this referral were Jim McDougal, Charles Peacock III, and the Bill Clinton Political Committee Fund.[84] The alleged crimes were false statements, misuse of position, conspiracy, and bank fraud.[85] This referral alleged that on April 4, 1985, Jim McDougal caused Madison Guaranty to issue a cashier's check for $50,000 to Charles Peacock, III, a shareholder and former director of Madison Guaranty, ostensibly to fund the down payment for a real estate purchase by Peacock.[86] The RTC noted that the cashier's check was dated April 4, 1985, the day before the April 5, 1985, date of the loan.[87] April 4, 1985, was also the date of a fundraiser hosted by Jim McDougal at Madison Guaranty to raise money to retire Governor Clinton's outstanding gubernatorial campaign debt.[88] The RTC alleged that Peacock diverted $38,940 of the funds to purchase real estate not named in the loan application.[89]

The referral also contained allegations that Peacock diverted additional funds from the loan in the form of two $3,000 cashier's checks, also dated April 4, 1985, made payable to Bill Clinton and then deposited into the Bill Clinton Political Committee account at the Bank of Cherry Valley in Cherry Valley, Arkansas.[90] The referral further alleged that on April 4, 1985,

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[84] RTC Crim. Ref. No. 730CR0196 at 2-5 (Aug. 18, 1993).

[85] Id. at 1.

[86] See id. at 6.

[87] Id. at 6.

[88] J. McDougal 4/2/97 GJ at 118.

[89] RTC Crim. Ref. No. 730CR0196 at 6 (Aug. 18, 1993).

[90] Id. at 6. The referral noted that the Bank of Cherry Valley was not only the home of the Bill Clinton Campaign Fund, but that it also held two outstanding loans to Whitewater

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Jim McDougal caused other Madison Guaranty accounts to issue an additional $3,000 cashier's check to the Bill Clinton Campaign Fund, purchased in the name of former U.S. Senator J.W. Fulbright, though signed in handwriting appearing to be McDougal's.[91] The RTC alleged that a fourth $3,000 check payable to Bill Clinton and deposited into the Bill Clinton Campaign Fund account at Cherry Valley was signed and written by Susan McDougal on the McDougals' Madison Guaranty checking account at a time when the account was already showing a negative balance and could only be paid on McDougal's order to force pay it.[92] Finally, the RTC alleged that a similar pattern of campaign contributions to Governor Clinton totaling $10,500 occurred in February and October 1985, funded with checks on accounts held at Madison Guaranty which were already overdrawn when the checks were force paid.[93] The RTC said in this referral that it was unable to trace the funds involved in these transactions completely because financial institutions outside the RTC's jurisdiction were involved.[94]

The referral attempted to show a possible link between McDougal's use of Madison Guaranty funds to support Governor Clinton's political interests and Madison Guaranty's own legal interests pending when the contributions were given.[95] The referral noted later that in the same month - April 1985 - the Clinton campaign contributions were routed through Madison Guaranty, Mrs. Clinton served as counsel to Madison Guaranty seeking approval from a state

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Development. Id. at 7-8.

[91] Id. at 6.

[92] Id. at 6-7.

[93] Id. at 7.

[94] Id.

[95] Id. at 8.

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regulatory agency, the Arkansas Securities Department, to issue preferred stock in order to raise capital for Madison Guaranty.[96] This action was necessary because Madison Guaranty was then below Federal Home Loan Bank Board ("FHLBB") capitalization limits.[97] The referral further noted that the state agency official contacted by Mrs. Clinton, Beverly Bassett Schaffer, had been appointed as the Savings & Loan Supervisor by Governor Clinton, and that Schaffer was a former law partner of Jim Guy Tucker, a subject in other RTC criminal referrals.[98] The referral said that Madison Guaranty's request to issue stock was approved, though Madison Guaranty did not ultimately issue the stock.[99]

The Independent Counsel's subsequent investigation revealed evidence of approximately $30,000 in contributions to Governor Clinton's campaign having been raised at the April 4, 1985 fundraiser. There was some evidence that one employee of Madison Guaranty made a contribution at the fundraiser, and that Madison Guaranty funds were then used to reimburse the employee for the contribution.[100] The Independent Counsel's investigation of this fundraiser, however, did not reveal any other Madison Guaranty employee whose contribution was similarly reimbursed, nor did any evidence show that Governor Clinton had any knowledge of the thrift's reimbursement of the employee's campaign contribution.

After a thorough investigation, the Independent Counsel determined that the evidence was insufficient to prove beyond a reasonable doubt that the suspects named in this referral

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[96] Id.

[97] Id.

[98] Id.

[99] Id. at 9.

[100] Pharis 7/19/95 Int. at 1.

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committed any federal criminal violations relating to the allegations in the referral.

vii. RTC Criminal Referral No. 730CR0203 (August 30, 1993).

Eugene Patrick Harris and Jim McDougal were named in this referral as suspects of violating federal criminal laws against misuse of position and bank fraud.[101] The referral alleged that Harris, in 1985, with McDougal's help, abused his position as an Madison Guaranty officer when he obtained a loan for himself from Madison Guaranty for 100 percent of the $152,665 purchase price on property located at 13th and Main Street in Little Rock, Arkansas, while eventually reselling the property to a third-party entity for $203,000, with Madison Guaranty extending a $350,000 loan to the third-party entity.[102] The RTC said in the referral it was unable to trace from Madison Guaranty's records the purpose of extending the second loan at 172 % of the purchase price, or even document what happened to the excess $147,000.[103]

The Independent Counsel's investigation determined the RTC had been mistaken in a number of material respects. Harris was never even employed by Madison Guaranty, but rather was a sales agent for Madison Financial, Madison Guaranty's wholly owned subsidiary.[104] He could not have abused his position as a loan officer in violation of the law. The Independent Counsel determined the evidence was insufficient to prove beyond a reasonable doubt that the suspects named in this referral committed any federal criminal violations relating to the allegations contained within.

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[101] RTC Crim. Ref. No. 730CR0203 at 1-4 (Aug. 30, 1993).

[102] Id. at 5.

[103] Id.

[104] Harris 12/23/86 Int. 1.

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viii. RTC Criminal Referral No. 730CR0199 (August 30, 1993).

This referral alleged that suspects Chris V. Wade, Jim McDougal, Sheffield Nelson, Jerry Jones, Larry Wallace, and John Flake may have violated federal laws prohibiting embezzlement, false statements, misuse of position, conspiracy, and bank fraud.[105] The RTC alleged that in 1983, Wade individually, and McDougal for Madison Financial, purchased 3,900 acres at Campobello Island, New Brunswick, Canada to develop a resort.[106] The RTC alleged that the suspects, along with other persons and entities, executed a series of transactions designed to obscure the degree to which Madison Guaranty funded the $825,000 purchase. Madison Guaranty was limited to a 6% investment in Madison Financial (its service corporation) which regulators said the bank violated in 1984.[107] The RTC alleged that McDougal and Wade intended to procure fees for themselves and their family members and friends, entirely at the expense of Madison Guaranty through Madison Financial's ownership and development of Campobello.[108]

The Independent Counsel found the documentation for the loan from Madison Guaranty to Wade accurately reflected the loan so that regulators could not have been deceived. The Independent Counsel also found that the transactions for funding from entities other than Madison Guaranty were legitimate; that those non-Madison Guaranty-related entities were economically at risk because of the transactions; and that McDougal did not have any secret agreements, otherwise making Madison Guaranty liable for their risk. The Independent

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[105] RTC Crim. Ref. No. 730CR0199 at 1-8 (Aug. 30, 1993).

[106] Id. at 9.

[107] Id.

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Counsel's investigation revealed no evidence of payments to McDougal family members or friends for work not actually performed for Campobello. The RTC alleged that McDougal and Wade violated a federal law known as the Interstate Land Sales Act,[109] but the Independent Counsel's investigation determined that even if there had been such a violation, the sales were not fraudulently conducted and would not be material either to Madison Guaranty or the real estate joint venture. Accordingly, the Independent Counsel determined the evidence was insufficient to prove this referral's alleged criminal violations beyond a reasonable doubt.

ix. RTC Criminal Referral No. 730CR0210 (September 17, 1993).

The suspects named in this referral were Jim McDougal, Lorene McDougal (his mother and a Madison Guaranty employee), and Andrew Clark, whom the RTC alleged may have committed the crimes of false statements, misuse of position, bank fraud, wire fraud, conspiracy, and misappropriation of funds.[110]

The referral's allegations related to a real estate subdivision project in Independence County, Arkansas, known as Goldmine Springs.[111] Goldmine Springs was a partnership between Madison Financial and Madison Guaranty borrower and insider Freddie Whitener, who served both as contractor and managing partner on the project.[112] The RTC alleged that Madison Guaranty's records showed a Madison Guaranty loan of $50,600 made out to a couple to fund a

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[108] Id.

[109] 15 U.S.C. §§ 1701-1720.

[110] RTC Crim. Ref. No. 730CR0210 at 1-6 (Sept. 17, 1993).

[111] Id. at 6.

[112] Id.

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purchase of several Goldmine Springs lots.[113] The RTC was unable to locate any verification through land sale records maintained by the county where the Goldmine Springs project was located confirming that any such transaction had occurred.[114]

The RTC located a check for $50,600 -- drawn on a Madison Guaranty checking account, dated just over one month after the date of the $50,600 loan from Madison Guaranty to the couple for the uncorroborated land purchase -- payable to Lorene McDougal, who was employed at Madison Guaranty as a "greeter" for the thrift.[115] Lorene McDougal had endorsed the check, deposited the proceeds into her Madison Guaranty account, and wired $50,000 out of the account to a Texas bank where she purchased a $50,000 certificate of deposit.[116] The RTC referral alleged that the $50,600 loan from Madison Guaranty to the couple for the supposed purchase of Goldmine Springs property was fraudulent, and that the funds had been diverted back to McDougal or his mother for their own benefit.[117]

These allegations were investigated and largely completed during the tenure of regulatory Independent Counsel Fiske.[118] After McDougal's trial and conviction on other matters,[119] he began cooperating with the Independent Counsel's overall investigation. He told the Independent Counsel that the RTC had incorrectly assumed that the transactions surrounding the $50,600

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[113] Id.

[114] Id.

[115] Id. at 6-7.

[116] Id. at 6.

[117] Id. at 7.

[118] Fiske Report, supra note 4, at 55-56.

[119] United States v. James B. McDougal, et al., No. LR-CR-95-173 Docket No. 600 (E.D. Ark. Apr. 17, 1997).

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amounts were related to Goldmine Springs.[120] McDougal said the sale had involved his parent's residence after the death of his father and was entirely legitimate.[121] It should not have appeared in the court records searched by the RTC because the home was not located in the same county as Goldmine Springs.[122] Based on McDougal's information, which this Office's additional investigative steps did not contradict, the Independent Counsel determined that the evidence was insufficient to prove beyond a reasonable doubt that the suspects named in this referral committed any federal criminal violations relating to the allegations in the referral.

x. RTC Criminal Referral No. 730CR0211 (September 23, 1993).

The RTC asserted in this referral that suspects Jim McDougal, Susan McDougal, and Charles Peacock, III, had potentially committed the crimes of false statements, misuse of position, conspiracy, and bank fraud.[123] The RTC alleged the suspects misappropriated Madison Guaranty loan proceeds for their own personal gain by causing Madison Guaranty to extend a loan to purchase 29.77 acres of undeveloped land in Pulaski County, Arkansas, at ten times its objective worth using an obviously inflated appraisal by Robert Palmer.[124] The referral said that the loan was made to a company owned by Peacock, which purchased the land from Madison Financial.[125] The referral further alleged that some of the loan proceeds went to Susan

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[120] J. McDougal Int. 8/1/96-6/9/97 at 96-97.

[121] Id.

[122] Id.

[123] RTC Crim. Ref. No. 730CR0211 at 1-5 (Sept. 23, 1993).

[124] Id. at 6.

[125] Id.

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McDougal in the form of a $33,000 sales commission on the transaction.[126] Finally, the referral questioned the propriety of more than a half million dollars paid by Madison Financial to another company owned by Peacock, allegedly for landscaping at the Pulaski County and other projects.[127]

After a thorough investigation, including interviews with McDougal and Palmer after their convictions,[128] the Independent Counsel determined the evidence was insufficient to prove beyond a reasonable doubt that the suspects named in the referral committed any federal criminal violations related to the allegations.

b. Additional RTC Referrals (July 1994).

In July 1994, the RTC told Fiske's Office there were additional potential criminal violations. Fiske however, did not start an investigation out of deference to the newly appointed statutory Independent Counsel.[129]

i. RTC Investigative Memorandum about Maple Creek Sewer Improvement District (July 1, 1994).[130]

The RTC alleged that over $1 million in Madison Guaranty funds had been funneled to

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[126] Id.

[127] Id. at 6-7.

[128] See, e.g., J. McDougal FBI Int. 8/1/96 through 6/9/97 at 99; see also R. Palmer 3/3/95 Int. at 1.

[129] Fiske Report, supra note 4, at 18-19.

[130] The RTC internally referred to this investigative memorandum as a "soft referral," meaning that the allegations had not been fully advanced through all RTC procedures required to generate an official referral. Memo from C. Duane Curtis, Acting Section Chief for RTC Kansas City Office, to Andrew E. Tomback, RTC Deputy General Counsel (July 15, 1994). Curtis recommended "that the referrals be forwarded formally by Washington, D.C. Litigation 'as is' to the Office of the Independent Counsel" because the allegations in the "soft referrals" had already been informally discussed with the Office of the Independent Counsel. Id. at 2.

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"Madison Guaranty insiders" through a Madison Financial real estate development project called, Maple Creek Farms.[131] The RTC alleged that Madison Guaranty had permitted Maple Creek Farms's "sewer improvement district account" to maintain an over-drafted account between January and May 1985, with an "average $75,000 overdrawn, with a high figure of $142,568.92 on May 29, 1985."[132] During the same time, the RTC alleged that $1,863,446.89 in Maple Creek funds were derived from Madison Guaranty and paid to Susan McDougal, Jim McDougal, Pat Harris, R.D. Randolph, Jim Guy Tucker, Ken Peacock, Eric Sorenson, and Chris Wade.[133] The RTC's investigative memorandum concluded as follows:

> The internal documentation indicates that approximately $1,000,000 was expended by Madison Guaranty for the purpose of installing a sewer system at Maple Creek Farms. According to employees of Madison Guaranty, the terms, conditions, and accountability of part of those funds is unknown. . . . As evidenced by the high level of funds paid to Madison Guaranty insiders, a check should be made to determine if all of the $1,000,000 went to the sewer system or was paid to insiders as well.[134]

ii. RTC Investigative Memorandum about Castle Grande and Seth Ward (July 6, 1994).

In its investigative memorandum, the RTC alleged that Jim McDougal, John Latham, Don Denton, Greg Young, and Seth Ward participated in a fraudulent scheme in which Ward acted as a straw purchaser to hide Madison Financial's purchase of Castle Grande property.[135]

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[131] Memo from Gary Davidson, RTC Investigator/Civil Fraud (Kansas City, MO) to Julie O'Sullivan, Associate Independent Counsel at 1-2 (July 1, 1994).

[132] Id. at 2.

[133] Id.

[134] Id. at 4.

[135] Memo from C. Edward Noyes, RTC Sr. Criminal Investigator to Julie O'Sullivan, Associate Independent Counsel re: RTC Allegations of Criminal Wrong-Doing/SETH V. WARD, et al. (July 6, 1994).

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The Independent Counsel's full investigation and conclusions about the matters addressed in this investigative memorandum are covered in detail within the body of the Final Report.

iii. RTC Report of Apparent Crime RTC Log # 730 000 000 000 00072 (July 28, 1994).

The RTC alleged in this referral that Madison Guaranty's suddenly increased deposits were the result of laundered funds generated by criminal activities.[136] The Independent Counsel declined to pursue these allegations.

4. Efforts to Impede the RTC's Investigation of Madison Guaranty, Whitewater Development, and CMS.

Soon after Fiske was appointed the regulatory Independent Counsel, he was told "that officials of the Kansas City RTC office are being gagged and possibly coerced by the Washington RTC office."[137] He conducted a thorough grand jury investigation of various alleged efforts to impede the RTC Madison Guaranty investigation, and eventually focused most prominently on contacts between the White House and the RTC about the RTC's investigation of Madison Guaranty and Whitewater Development.[138]

After Independent Counsel Starr's appointment, this Office completed its full investigation into any alleged efforts by the White House to interfere or obstruct the RTC's investigation of Madison Guaranty, including allegations relating to contacts between the White House or Department of Treasury officials and the RTC about Madison Guaranty. After a

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[136] Id.

[137] Letter from Rep. James A. Leach, to Robert B. Fiske Jr. at 3 (Mar. 10, 1994).

[138] Fiske Report, supra note 4, at 4, 13, 20-21. Fiske deemed his examination of the alleged RTC-White House contacts complete and declined to bring any criminal charges. Id. at 20.

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thorough investigation, the Independent Counsel determined the evidence was insufficient to prove beyond a reasonable doubt that any federal criminal offenses were committed during contact between White House or Department of Treasury personnel and the RTC about the RTC's investigation of Madison Guaranty and Whitewater Development, as set forth in the body of this Final Report.

5. Perry County Bank's Relations with the 1990 Clinton Gubernatorial Campaign.

Based on information previously developed by regulatory Independent Counsel Fiske, on August 29, 1994, Independent Counsel Starr requested, pursuant to 28 U.S.C. § 594(e), that the Attorney General refer to him investigative and prosecutorial jurisdiction over the following matters:

> (1) Whether any person committed any federal crime in connection with accounts maintained by the 1990 Clinton gubernatorial campaign at the Perry County Bank; and
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> (2) Whether any person committed any federal crime, including crimes involving IRS filing requirements, in connection with funds maintained in accounts belonging to or connected with the Clintons at the Perry County Bank.[139]

On September 2, 1994, the Department of Justice referred the requested jurisdiction to the Independent Counsel.[140]

Following the Department's referral, the Independent Counsel notified the Special Division of the referral, as required by 28 U.S.C. § 594(e), and to avoid any challenge to the

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[139] Letter from Independent Counsel Kenneth W. Starr, to Attorney General Janet Reno (Sept. 2, 1994). The information upon which the request was based was developed during Fiske's investigation. See id. at 1-2; Fiske Report, supra note 4, at 16, 50-51.

[140] See Letter from John C. Keeney, Acting Assistant Attorney General, Criminal Div., to Independent Counsel Kenneth W. Starr (Sept. 2, 1994).

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Independent Counsel's jurisdiction on the ground that a referral from the Special Division was necessary, also requested the Court enter an Order referring the same matters. The Special Division entered such an order on December 19, 1994.[141]

Neal T. Ainley, who had been previously identified as a suspect by Fiske,[142] pleaded guilty on May 2, 1995, to one misdemeanor violation of 26 U.S.C. § 7207 and 18 U.S.C. § 2 and one misdemeanor violation of 26 U.S.C. § 7207.[143] Ainley was sentenced by United States District Judge Susan Webber Wright to two years probation, a $1,000 fine, and 416 hours of community service.[144] On January 30, 1998, Judge Wright found that Ainley had violated the terms of his probation and sentenced him to three months confinement in a halfway house.[145] Ainley's superiors, Herby Branscum and Rob Hill, were also indicted for conspiring with Ainley to impede the IRS in violation of 18 U.S.C. § 1005, and causing Ainley to certify falsely that Perry County Bank had filed the required Currency Transaction Reports. The jury acquitted Branscum and Hill of both of these charges.

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[141] Order, In re: Madison Guaranty Sav. & Loan Ass'n, (D.C. Cir. [Spec. Div.] Dec. 19, 1994).

[142] See Letter from Independent Counsel Kenneth W. Starr, to Attorney General Janet Reno at 2 (Sept. 2, 1994).

[143] United States v. Neal T. Ainley, No. LR-CR-95-43 Docket No. 17 (E.D. Ark. May 2, 1995).

[144] United States v. Neal T. Ainley, No. LR-CR-95-43 Docket No. 26 (E.D. Ark. Jan 23, 1996).

[145] United States v. Neal T.Ainley, No. LR-CR-95-43 Docket No. 37 (E.D. Ark. Jan 30, 1998).

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6. Landowners Management System, Inc. Bankruptcy Proceeding and William J. Marks Sr.

Continuing another investigative matter first developed during regulatory Independent Counsel Fiske's tenure, on August 31, 1994, Judge Starr requested that, pursuant to 28 U.S.C. § 594(e), the Attorney General refer investigative and prosecutorial jurisdiction over matters relating to the bankruptcy action In re: Landowners Management Systems, Inc., United States Bankruptcy Court, Northern District of Texas, Case No. 787-70392.[146] On September 2, 1994, the Attorney General referred the following matters in response to this request:

> (1) Whether any person committed any federal crime relating to the bankruptcy action entitled In re: Landowners Management Systems, Inc., Tax Identification No. 75-2001914, Debtor, United States Bankruptcy Court, Northern District of Texas, Case No. 787-70392 (Chapter 11); and
>
> (2) Whether William J. Marks Sr. failed to file personal tax returns for 1987 and 1990 in violation of 26 U.S.C. § 7203.[147]

Following the Department's referral, the Independent Counsel notified the Special Division of the referral, as required by 28 U.S.C. § 594(e).[148] To avoid any challenge to the Independent Counsel's jurisdiction on the ground that a referral from the Special Division was necessary, the Independent Counsel requested that the Court enter an Order referring the same matters. The Special Division entered such an order on December 19, 1994.[149]

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[146] Letter from Independent Counsel Kenneth W. Starr, to Attorney General Janet Reno (Aug. 31, 1994). This matter had been previously identified by Fiske. See Fiske Report, supra note 4, at 16, 45-49.

[147] See Letter from John C. Keeney, Acting Assistant Attorney General, Criminal Div., to Independent Counsel Kenneth W. Starr (Sept. 2, 1994).

[148] Order, In re: Madison Guaranty Sav. & Loan Ass'n, (D.C. Cir. [Spec. Div.] Dec. 19, 1994).

[149] Id.

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William J. Marks Sr. pleaded guilty to one felony count of conspiring to defraud the IRS, in violation of 18 U.S.C. § 371.[150] Marks was sentenced to four years probation and ordered to pay restitution to the United States in the amount of $1 million.[151]

On February 20, 1998, Jim Guy Tucker, who had been previously identified as a suspect by Fiske,[152] pleaded guilty to one felony count of conspiring to defraud the IRS, in violation of 18 U.S.C. § 371.[153] Tucker was sentenced to four years probation, including four hours of community service during each week of his probation, fined $6,000, and ordered to pay $1 million in restitution to the United States.[154] Tucker successfully appealed the amount of the restitution order, and on June 3, 2000, the United States Court of Appeals for the Eighth Circuit remanded the case to the district court for resentencing on the amount of restitution.[155]

On February 20, 1998, John Haley pleaded guilty to one misdemeanor count of aiding and abetting the willful failure to supply information to the IRS in violation of 26 U.S.C. § 7203.[156] Haley was sentenced to three years probation, including the requirement that he perform

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[150] United States v. William J. Marks, No. LR-CR-95-117 Docket No. 177 (E.D. Ark. Aug. 28, 1997).

[151] United States v. Jim Guy Tucker, et al., No. LR-CR-95-117 Docket No. 287 (E.D. Ark. May 22, 1998).

[152] See Fiske Report, supra note 4, at 16, 45-49.

[153] United States v. Jim Guy Tucker, et al., No. LR-CR-95-117 Docket No. 265 (E.D. Ark. Feb. 20, 1998).

[154] United States v. Jim Guy Tucker, et al., No. LR-CR-95-117 Docket Nos. 316, 320 (E.D. Ark. May 17, 1999).

[155] United States v. Tucker, 217 F.3d 960 (8th Cir. 2000). The remanded restitution issue has not yet been resolved by the District Court. The Independent Counsel has deemed the matter insufficient to further delay the filing of this Final Report.

[156] United States v. John H. Haley, No. LR-CR-98-29 Docket Nos. 1-2 (E.D. Ark. Feb. 20, 1998).

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eight hours of community service during each week of the probationary period, fined $30,000, and ordered to pay $40,000 in restitution to the United States.[157]

7. Herby Branscum Jr. and Robert M. Hill and the 1990 Clinton Gubernatorial and 1992 Presidential Campaigns.

On December 19, 1994, the Special Division referred jurisdiction over an investigation begun under regulatory Independent Counsel Fiske, namely:

> [w]hether any person committed any federal crime in connection with accounts maintained by the 1990 Clinton gubernatorial campaign at the Perry County Bank.[158]

Neal T. Ainley provided the Independent Counsel with information showing that two principal shareholders and directors of Perry County Bank -- Herby Branscum Jr. and Robert M. Hill -- made political contributions to Governor Clinton's 1990 gubernatorial and 1991 presidential exploration campaigns, and that they submitted no backup expense claims or false expense claims to the Perry County Bank in order to obtain reimbursement for those contributions.[159] Additional information raised the possibility that contributions made in the names of Branscum's and Hill's family members and associates may also have been reimbursed by the bank.[160]

On June 8, 1995, the Independent Counsel requested that the Attorney General refer

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[157] United States v. John H. Haley, No. LR-CR-98-29 Docket No. 9 (E.D. Ark. Aug. 20, 1998).

[158] Order, In re: Madison Guaranty Sav. & Loan Ass'n, (D.C. Cir. [Spec. Div.] Dec. 19, 1994); see also Fiske Report, supra note 4, at 16, 50-51 (confirming that this investigation began under Fiske).

[159] Application for Order of Referral and Order of Jurisdiction of Independent Counsel, In re: Madison Guaranty Sav. & Loan Ass'n, (D.C. Cir. [Spec. Div.] July 21, 1995).

[160] Id.

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investigative and prosecutorial jurisdiction over the following matter:

> Whether any person committed any federal crime in connection with contributions made by Herby Branscum Jr., Robert M. Hill, members of their families, or any other persons associated with them, to the 1990 Clinton gubernatorial campaign or the 1992 Clinton presidential campaign.[161]

On June 21, 1995, the Attorney General referred the requested jurisdiction to the Independent Counsel under 28 U.S.C. § 594(e), on the grounds that it was related to matters previously referred to the Independent Counsel.[162] The Special Division entered an Order to the same effect on July 28, 1995.[163]

The trial of United States v. Herby Branscum Jr. and Robert Hill began on June 17, 1996, presided over by United States District Judge Susan Webber Wright.[164] On August 1, 1996, the jury deadlocked on seven felony counts: one count under 18 U.S.C. § 371 (conspiracy); three counts under 18 U.S.C. § 1005 (false bank entries); and three counts under 18 U.S.C. § 656 (embezzlement).[165] The jury returned not guilty verdicts for both defendants on two felony counts related to this referral: one count under 18 U.S.C. § 371 and one count under 18 U.S.C. § 1005.[166] A mistrial as to the deadlocked counts was declared by the Court, and on September 13,

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[161] Letter from Independent Counsel Kenneth W. Starr, to Attorney General Janet Reno (June 8, 1995).

[162] Letter from Assistant Attorney General Jo Ann Harris, to Independent Counsel Kenneth Starr (June 21, 1995).

[163] Order, In re: Madison Guaranty Sav. & Loan Ass'n, (D.C. Cir. [Spec. Div.] July 28, 1995).

[164] United States v. Herby Branscum Jr., et al, No. LR-CR-96-49 Clerk Minutes (E.D. Ark. June 17, 1996).

[165] United States v. Herby Branscum Jr., et al., No. LR-CR-96-49 Docket Nos. 126, 127 (E.D. Ark. Aug. 2, 1996).

[166] Id.

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1996, the Independent Counsel filed a motion to dismiss the remaining counts.[167]

8. Purchase of Property in Lee County, Arkansas, by the Arkansas Development Finance Authority or Arkansas Department of Corrections.

While Fiske was the regulatory Independent Counsel, "[v]arious articles appeared in the media early in the investigation alleging that Governor Clinton, directly or indirectly, arranged for various of his political supporters and contributors to receive bond underwriting and bond counsel business in connection with bonds issued by the Arkansas Development Finance Authority" ("ADFA").[168] Later it was alleged the Arkansas Department of Corrections ("ADOC") purchased land in Lee County, Arkansas, in 1990 at a price fraudulently inflated above reasonable market value for the purpose of establishing a prison farm, and that the purchase was financed by ADFA through a bond offering.[169] The excess money from the transaction reportedly went to pay a debt owed to a private company. The private company was represented by the same attorney serving as bond counsel to ADFA for the bond issue that financed the transaction.[170] The attorney was a partner with the firm Wright, Lindsey & Jennings, Clinton Administration official Bruce Lindsey's former law firm.[171]

On June 23, 1995, Independent Counsel Starr detailed the above allegations and information to Attorney General Janet Reno, and asked her to make a determination as to

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[167] Id.

[168] Fiske Report, supra note 4, at 60.

[169] Letter from Independent Counsel Kenneth W. Starr, to Attorney General Janet Reno at 2 (June 23, 1995). Under state law, the transaction had to be approved by Governor Clinton, and one of the Governor's political advisors also acted as ADFA's President when the transaction was approved. Id. at 2-3, 5.

[170] Id.

[171] Id.

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whether: 1) the matter was related to the Independent Counsel's existing jurisdiction so that it should be referred to the Independent Counsel under 28 U.S.C. § 594(e); or 2) whether the matter was not related to the Independent Counsel's jurisdiction and should not be referred to this or any other independent counsel, but instead referred to an appropriate section within the Justice Department for further investigation.[172] The Independent Counsel did not recommend the Attorney General which alternative he believed was correct or preferable; instead the Independent Counsel offered to, in the event that the Attorney General opted to refer the matter to the Justice Department, re-detail the agents who had investigated the matter for the Independent Counsel over to the Department in order to ensure continuity of investigative knowledge and effort.[173]

The Attorney General concluded the matter was related to the Independent Counsel's existing jurisdiction, and therefore referred it to the Independent Counsel instead of continuing the investigation at the Justice Department.[174] The Special Division entered an Order on July 28, 1995 confirming the Independent Counsel's jurisdiction over:

> Whether any person committed any federal crime in connection with the purchase of property in Lee County, Arkansas, by the Arkansas Development Finance Authority or the Arkansas Department of Corrections.[175]

With the statute of limitations on any potential crimes within weeks of expiring,[176] the

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[172] Id.

[173] Id.

[174] Letter from Assistant Attorney General, Crim. Div., Jo Ann Harris, to Independent Counsel Kenneth W. Starr (June 28, 1995).

[175] Order, In re: Madison Guaranty Sav. & Loan Ass'n, (D.C. Cir. [Spec. Div.] July 28, 1995).

[176] Letter from Assistant Attorney General, Crim. Div., Jo Ann Harris to Independent

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Independent Counsel investigated the allegations and determined that there was insufficient evidence to prove beyond a reasonable doubt that any person had committed a federal crime. Accordingly, the Independent Counsel closed the matter.

9. Chris and Rosalee Wade Fraud and Bankruptcy.

October 25, 1994, Judge Starr requested that the Attorney General, in accordance with 28 U.S.C. § 594(e), refer to this Office investigative and prosecutorial authority over certain matters relating to Christopher V. Wade and Rosalee Wade, who had been previously identified as potential criminal suspects by Fiske.[177] On December 7, 1994, the Department of Justice responded by referring jurisdiction over the following matters:

> (1) Whether Mr. and Mrs. Chris Wade and others acting in concern with them violated any federal criminal law by defrauding Red River Valley Bank and Trust in connection with loan applications made to and loans received from the bank;
>
> (2) Whether Mr. and Mrs. Wade and others acting in concert with them violated any federal criminal law in connection with the bankruptcy action filed by the Wades in 1989; and
>
> (3) Whether Mr. and Mrs. Wade filed fraudulent income tax returns.[178]

Following the Department's referral, the Independent Counsel notified the Special Division of the referral, as required under 28 U.S.C. § 594(e), and to avoid any challenge to the Independent Counsel's jurisdiction on the ground that a referral from the Special Division was necessary, also requested that the Court enter an Order referring the same

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Counsel Kenneth W. Starr at 1 (June 28, 1995).

[177] Letter from Independent Counsel Kenneth W. Starr, to Attorney General Janet Reno (Oct. 25, 1994); see Fiske Report, supra note 4, at 53.

[178] Letter from Lee Radek, Public Integrity Section Chief, Dept. of Justice Criminal Division, to Independent Counsel Kenneth W. Starr (Dec. 7, 1994).

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matters. The Special Divisions entered such an order on December 19, 1994.[179]

Chris Wade pleaded guilty, on March 21, 1995, to one felony violation of 18 U.S.C. § 152 (false statement) and one felony violation of 18 U.S.C. § 1014 (false statement to lending authority), and was sentenced to fifteen months in prison, three years supervised release, and fined $3,000.[180]

10. FDIC and RTC Referrals Relating to Rose Law Firm.

On July 10, 1995, the Acting Inspector General of the Federal Deposit Insurance Corporation ("FDIC") sent the Independent Counsel a "Referral of Possible Criminal Violations" involving the Rose Law Firm.[181] In that referral, the FDIC outlined possible criminal violations by members of the Rose Law Firm, including conflicts of interest when it represented the RTC and FDIC, and its failure to disclose relevant information to the FDIC when undertaking that representation, including its prior representation of Madison Guaranty.[182] The FDIC said it had investigated allegations of Rose's failure to disclose that:

> 1) in 1985 the firm had represented Madison Guaranty before the Arkansas Securities Department;[183] 2) a former Rose partner, Webster L. Hubbell, was the son-in-law of a Madison Guaranty borrower [Seth Ward] and consultant who was in litigation with the Madison Conservatorship; and 3) another former Rose

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[179] Order, In re: Madison Guaranty Sav. & Loan Ass'n, (D.C. Cir. [Spec. Div.] Dec. 19, 1994).

[180] United States v. Christopher V. Wade, No. LR-CR-95-48 Docket Nos. 5 & 31 (E.D. Ark. Dec. 12, 1995).

[181] Letter from James A. Renick, Acting Inspector General, FDIC Office of Inspector General, to Independent Counsel Kenneth W. Starr (July 10, 1995).

[182] Id.

[183] This allegation relates to Mrs. Clinton's representation of Madison Guaranty addressed in RTC Crim. Ref. No. 730CR0196 at 8-9 (Aug. 18, 1993), which was originally brought to Fiske's attention by the RTC.

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> partner, Hillary Rodham Clinton, had assisted in litigation on behalf of the First American Conservatorship and that the owner of the defendant corporation in the First American litigation was a personal friend of Mrs. Clinton's family and a contributor to her husband's political campaign for Governor of Arkansas. We also were requested to examine a review conducted by the FDIC Legal Division into the circumstances surrounding the retention of Rose to perform legal work for the Madison Conservatorship. In addition, we completed a review of payments made to Rose by the FDIC for legal services.[184]

The FDIC sent the referral to the Independent Counsel because it had "been directed previously by the Justice Department to bring matters related to these violations to the attention of your office [the Office of the Independent Counsel]."[185] The FDIC said that although its investigation did not reveal evidence of criminal violations by Mrs. Clinton, it had reasonable grounds to believe that Webster Hubbell or other Rose employees had violated a number of federal criminal prohibitions.[186]

A referral containing similar allegations was received by the Independent Counsel on September 25, 1995, from the Assistant Inspector General for Investigation of the RTC.[187] The RTC alleged that "certifications which were signed by Webster Hubbell, former partner of the Rose Law Firm, and submitted to the RTC to enable the Rose Law Firm to perform legal services may constitute false statements covered by 18 U.S.C. [§]1001."[188]

On September 29, 1995, the Independent Counsel told the Attorney General about these

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[184] Letter from James A. Renick, Acting Inspector General, FDIC Office of Inspector General, to Independent Counsel Kenneth W. Starr at 1 (July 10, 1995).

[185] Id. at 7.

[186] Id. at 1-2.

[187] Letter from Clark W. Blight, RTC Assistant Inspector General for Investigation, to Independent Counsel Kenneth W. Starr (Sept. 25, 1995).

[188] Id. at 1.

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referrals, and, pursuant to 28 U.S.C. §§ 593 & 594(e), requested that the Attorney General refer jurisdiction over further investigation of the matters to the Independent Counsel as related to the matters the Independent Counsel had already been granted jurisdiction over by the Special Division in its initial Order.[189] On January 17, 1996, Acting Assistant Attorney General John C. Keeney told the Independent Counsel of the Attorney General's "conclusion that these matters are encompassed by the language of your original grant of jurisdiction, and therefore can be properly handled by you."[190]

On August 15, 1996, the Special Division ordered:

> that the investigative and prosecutorial jurisdiction over the matters referred by Attorney General Janet Reno to Independent Counsel Kenneth W. Starr and to the Office of the Independent Counsel as related matter pursuant to 28 U.S.C. § 594(e), by letter dated January 17, 1996 from Acting Assistant Attorney General John C. Keeney to Independent Counsel Kenneth W. Starr, namely matters referenced in the Federal Deposit Insurance Corporation referral dated July 10, 1995 and the Resolution Trust Corporation referral dated September 25, 1995 and their related reports, be referred to Independent Counsel Kenneth W. Starr and to the Office of the Independent Counsel as related matters pursuant to 28 U.S.C. § 594(e).[191]

The Independent Counsel's investigation led to Hubbell's June 30, 1999 guilty plea on one felony count of falsifying, concealing, and covering up by scheme material facts within the

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[189] Letter from Independent Counsel Kenneth W. Starr, to Attorney General Janet Reno (Sept. 29, 1995).

[190] Letter from Acting Assistant Attorney General John C. Keeney, to Independent Counsel Kenneth W. Starr (Jan. 17, 1996).

[191] Order at 1, In re: Madison Guaranty Savings & Loan Assoc., (D.C. Cir. [Spec. Div.] Aug. 15, 1996). The FDIC continued to investigate whether members of the Rose Law Firm had informed the FDIC or RTC of representations of current or former clients that raised potential conflicts of interest with the FDIC or RTC, but failed to bring such conflicts to their attention and request a waiver. This resulted in additional referrals from the FDIC to the Office of the Independent Counsel, which in turn resulted in an additional grant of related jurisdiction. See

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jurisdiction of the FDIC and the Resolution Trust Corporation, in violation of 18 U.S.C. § 1001.[192] Judge James Robertson of the United States District Court for the District of Columbia sentenced Hubbell to one year of probation.[193]

11. Webster L. Hubbell's Rose Law Firm Billing and Expense Practices.

In the course of investigating the allegations surrounding Madison Guaranty, regulatory Independent Counsel Robert Fiske received information about alleged billing misconduct by Webster L. Hubbell while he was a member of the Rose Law Firm.[194] Fiske became aware of these allegations from a public March 2, 1994 report indicating the Rose firm was investigating its former partner's billing practices.[195] Fiske received information in April 1994 from a confidential source that said that Hubbell had overbilled the RTC and FDIC in the course of representing those agencies in a lawsuit.[196] After reviewing subpoenaed information received to investigate those allegations, Fiske then explored whether Hubbell had used client advance checks of the firm to pay more than $300,000 in personal credit card bills from 1989 through January 1993.[197]

When Judge Starr assumed matters previously under investigation by Fiske, Independent Counsel Starr petitioned the Special Division, pursuant to 28 U.S.C. § 594 (e), to refer

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Order, In re: Madison Guaranty Savings & Loan Assoc., (D.C. Cir. [Spec. Div.] Feb. 3, 1998).

[192] Plea Agreement, United States v. Webster L. Hubbell, No. 98-0394 (D.D.C. June 30, 1999).

[193] Judgment, United States v. Webster L. Hubbell, No. 98-0394 (D.D.C. July 1, 1999).

[194] Fiske Report, supra note 4, at 16, 40-43.

[195] Id. at 41.

[196] Id.

[197] Id. at 42-43.

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investigative and prosecutorial jurisdiction over the following matter related to and arising out of the Independent Counsel's existing Madison Guaranty jurisdiction:

> Whether Webster L. Hubbell, a covered person under the statute, violated any federal criminal law (including mail fraud and criminal tax violations) in his billing or expense practices while a member of the Rose Law Firm.[198]

On September 1, 1994, the Special Division granted the requested jurisdiction.[199]

Hubbell pleaded guilty on December 6, 1994, to one felony violation of 18 U.S.C. § 371 (conspiracy), and one felony violation of 26 U.S.C. § 7201 (tax evasion), and was sentenced to twenty-one months imprisonment, three years supervised release, and restitution to Rose in the amount of $135,000.[200]

12. Matters Relating to Webster L. Hubbell's Income Received since January 1, 1994.

As noted above, the Special Division referred prosecutorial and investigative jurisdiction to the Independent Counsel over the related matter of "whether Webster L. Hubbell . . . violated any federal criminal law (including mail fraud and criminal tax violations) in his billing or expense practices while a member of the Rose Law Firm."[201] This referral was based on information developed during the tenure of regulatory Independent Counsel Fiske.[202] On

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[198] Letter from Independent Counsel Kenneth W. Starr, to Special Division Judges David B. Sentelle, John D. Butzner Jr., and Joseph T. Sneed at 3 (Aug. 31, 1994).

[199] Order, In re: Madison Guaranty Sav. & Loan Ass'n, (D.C. Cir. [Spec. Div.] Sept. 1, 1994).

[200] Judgment, United States v. Webster L. Hubbell, No. LR-CR-94-241 (E.D. Ark. Aug 15, 1995).

[201] Order, In re: Madison Guaranty Sav. & Loan Ass'n (Webster L. Hubbell), (D.C. Cir. [Spec. Div.] Sept. 1, 1994).

[202] Fiske Report, supra note 4, at 16, 41-42.

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December 6, 1994, Hubbell pleaded guilty to two felony counts related to his Rose Law Firm billing and expense practices, and as part of his plea agreement with the Independent Counsel, Hubbell agreed to cooperate fully with the Independent Counsel's continuing investigation.[203]

During the Independent Counsel's continued investigation, this Office received information about payments to Hubbell from individuals and entities associated with the Clinton Administration.[204] These payments were first made in 1994, when Hubbell was publicly known to have been under criminal investigation by the Independent Counsel.[205] This Office initiated a preliminary investigation into whether these payments were related to Hubbell's lack of substantial assistance to this Office's ongoing investigations.[206] As a result, the grand jury heard evidence about the payments, including evidence that Hubbell may have committed fraud and tax crimes.[207]

In light of the above, and on the grounds that payments to Hubbell were related to a possible obstruction of justice of the existing investigation, on December 31, 1997, the Independent Counsel petitioned the Special Division for an order referring investigative and prosecutorial authority over:

> (i) whether Webster L. Hubbell or any individual or entity violated any criminal law, including but not limited to criminal tax violations and mail and wire fraud, regarding Hubbell's income since January 1, 1994, and his tax and other debts to

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[203] Plea Agreement, United States v. Hubbell, No. LR-CR-94-241 (E.D. Ark. Dec. 6, 1994).

[204] Application for Order of Referral to Independent Counsel at 3, In re: Madison Guaranty Sav. & Loan Ass'n, (D.C. Cir. [Spec. Div.] Dec. 31, 1997).

[205] Id.

[206] Id.

[207] Id. at 3-4.

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the United States, the State of Arkansas, the District of Columbia, the Rose Law Firm, and other; and

(ii) whether Webster L. Hubbell or any individual or entity violated any criminal law, including but not limited to obstruction of justice, perjury, false statements, and mail and wire fraud, related to payments that Hubbell has received from various individuals and entities since January 1, 1994.[208]

On January 6, 1998, the Special Division entered its Order confirming the above jurisdiction.[209] For the reasons stated in the body of the Final Report, the Independent Counsel concluded that there was insufficient evidence to prove beyond a reasonable doubt that any of Hubbell's clients hired or paid him in order to buy his silence.

On April 30, 1998, Hubbell and three other defendants were indicted by a federal grand jury in the District of Columbia on ten felony counts of various tax-related offenses.[210] On July 1, 1998, United States District Judge Robertson dismissed the indictment on the grounds that it was beyond the jurisdiction of the Office of the Independent Counsel[211] and because the government had based the indictment on the contents of documents Hubbell had produced pursuant to a limited order of immunity. Accordingly, Judge Robertson held that the government's use of those documents against Hubbell was a violation of his Fifth Amendment rights under the United States Constitution.[212] The Independent Counsel appealed both aspects

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[208] Id.

[209] Order, In re: Madison Guaranty Sav. & Loan Ass'n, (D.C. Cir. [Spec. Div.] Jan. 6, 1998).

[210] Indictment, United States v. Webster L. Hubbell, Suzanna W. Hubbell, Michael C. Schaufele and Charles C. Owen, No. 98-015 (D.D.C. Apr. 30, 1998).

[211] Memo Opinion, United States v. Webster L. Hubbell, et al., No. 98-0151 (D.D.C. July 1, 1998).

[212] Id.

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of the ruling.

On January 26, 1999, the United States Court of Appeals for the District of Columbia Circuit reversed the district court. It held that the indictment was within the Independent Counsel's jurisdiction and that the lower court had applied the incorrect standard in evaluating Hubbell's Fifth Amendment claim.[213] The Court of Appeals remanded the case to Judge Robertson for application of the articulated standard. The Office of the Independent Counsel then entered into a plea agreement with Hubbell because it concluded that it could not prevail under the standard.

Pursuant to the plea agreement, Hubbell pleaded guilty to a superseding criminal information on June 30, 1999, which charged him with one misdemeanor count of willful tax evasion in violation of 26 U.S.C. § 7203. The government agreed to dismiss the indictment of the remaining three defendants.[214] The government also agreed to dismiss Hubbell's misdemeanor conviction if unable to obtain Supreme Court review of the Court of Appeals' decision, or if the Supreme Court's decision did not materially improve the government's ability to use the contents of Hubbell's production of documents.[215]

On July 26, 1999, the government filed a petition for certiorari with the United States Supreme Court, which the Court granted on October 12, 1999.[216] The parties argued the case on

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[213] United States v. Webster L. Hubbell, 167 F.3d 552 (D.C. Cir. 1999).

[214] Plea Agreement, United States v. Webster L. Hubbell, et al., Nos. 98-0151, 0394 (D.D.C. June 30, 1999).

[215] Id.

[216] United States v. Webster L. Hubbell, 120 S.Ct. 320 (1999).

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February 22, 2000.[217] On June 5, 2000, the Supreme Court ruled in Hubbell's favor, holding that the indictment against Hubbell impermissibly used the contents of the documents he had produced under immunity.[218] Consistent with the plea agreement, the Office of the Independent Counsel moved to vacate Hubbell's misdemeanor conviction.[219] That motion was granted.[220] Hubbell's prior felony convictions, described earlier, remained unaffected by the Supreme Court's ruling.

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[217] United States v. Webster L. Hubbell, 530 U.S. 27 (2000).

[218] Id.

[219] Motion Of The United States To Vacate Judgment Of Conviction And Dismiss The Superseding Criminal Information, United States v. Webster L. Hubbell, et al., No. 98-0151 (D.D.C. 2000).

[220] Order, United States v. Webster L. Hubbell, No. 98-0151 (D.D.C. Oct. 20, 2000).

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APPENDIX 4

CHRONOLOGY

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1970s

11/2/76	Bill Clinton is elected to a two-year term as Attorney General of Arkansas.
1/77	Hillary Clinton joins the Rose Law Firm ("Rose").
6/19/78	Bill Clinton and Jim McDougal obtain a down payment for the Whitewater property in Marion County, Arkansas by executing a $20,000 promissory note to Union National Bank.
8/2/78	Citizens Bank of Flippin, Arkansas loans the Clintons and the McDougals, in their individual capacities, an additional $182,611.20 to cover the rest of the $202,611.20 "Whitewater Estates" purchase price. Chris Wade serves as the realtor.
11/7/78	Bill Clinton is elected Governor of Arkansas for a two-year term.
1/79	Bill Clinton is sworn in as Governor. He names Steve Smith and Rudy Moore chiefs of staff and Jim McDougal an economic development advisor.
6/18/79	The Clintons and the McDougals form Whitewater Development Company, Inc. to engage in real estate transactions.
9/30/79	The Clintons and the McDougals deed the Whitewater property to the Whitewater Development Company.

1980

10/80	The McDougals, Steve Smith, Jim Guy Tucker and others buy the Bank of Kingston in Madison County, Arkansas. The partners later rename it Madison Bank and Trust.
11/4/80	Bill Clinton is defeated for re-election as Governor of Arkansas.
12/16/80	The Bank of Kingston loans Hillary Clinton $30,000. She uses Lot 13 of the Whitewater Development as collateral.

1981

4/13/81	Rose begins work for the Bank of Kingston.
8/14/81	Madison Bank & Trust loans $30,000 to Whitewater Development Company to pay the interest on the Citizens Bank loan.

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11/12/81 Whitewater Development Corporation borrows $27,000 from Madison Bank & Trust for operating capital.

11/16/81 Rose's Vince Foster writes to Madison Bank & Trust regarding litigation fees.

12/31/81 Madison Bank and Trust pays in full its first legal bill from Rose in the amount of $13,997.70.

1982

1/25/82 Jim McDougal purchases a controlling share of Woodruff County Savings & Loan.

2/6/82 Jim McDougal is elected President of Woodruff County Savings & Loan. The name is later changed to Madison Guaranty Savings & Loan.

7/30/82 Rose's second legal bill to Madison Bank and Trust for the appeal of a case in the amount of $5,893.63.

8/5/82 Madison Bank & Trust writes to Hillary Clinton indicating payments were insufficient to fully cover the accrued interest on her loan.

8/11/82 Hillary Clinton responds to Madison Bank & Trust's 8/5/82 letter by directing the Bank to resolve the issue with the McDougals.

10/17/82 Madison Bank & Trust directors meet and discuss a recent FDIC examination which found the bank made overline loans to affiliated parties, including the Whitewater Development Corporation. McDougal tells the board the $30,000 "owed by a corporation owned by Bill Clinton, his wife, Susan and myself," will be moved within 30 days.

11/1/82 Citizens Bank and Trust of Flippin, Arkansas makes a $20,000 personal loan to Hillary Clinton and the McDougals.

11/2/82 Bill Clinton is again elected to a two-year term as Governor of Arkansas.

11/15/82 Madison Guaranty cashiers check payable to "Bill Clinton" in the amount of $27,600. This check pays off the Madison Bank and Trust loan to the Whitewater Development.

12/11/82 Jim McDougal becomes President of Madison Financial Corporation, Madison Guaranty's service corporation.

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1983

4/27/83	The FDIC issues a cease and desist order to Madison Bank & Trust restricting lending to Madison County and the western half of Newton County. Arkansas Banking Commissioner Marlin Jackson later informs Governor Clinton of the FDIC's cease and desist order.
7/11/83	Madison Guaranty makes a $25,000 nominee loan to Chris Wade for the benefit of Jim McDougal. McDougal uses the proceeds to pay back the bulk of the Madison loan to Bill Clinton.
8/1/83	Susan McDougal writes a check from McDougal trustee account at Madison Guaranty to Madison Guaranty Savings & Loan. The memo section of the $5,081.82 check reads "Payoff Clinton."
9/20/83	Security Bank of Paragould loans Governor Clinton $20,800. Most of the proceeds were used to repay the loan from Madison Bank to Hillary Clinton.
10/10/83	Rose's Joe Giroir writes Jim McDougal about the legal bill left unpaid from previous litigation for Madison Bank and Trust.

1984

1/20/84	The Federal Home Loan Bank Board (FHLBB) begins an examination of Madison Guaranty.
6/1/84	Madison Guaranty receives the FHLBB's report, which concluded the thrift had a negative net worth and criticized its lending practices and financial stability.
7/19/84	Madison Guaranty executes a supervisory agreement with the FHLBB that broadly restricted the nature of the thrift's business transactions.
8/84	Governor Clinton jogs by Jim McDougal's office at Madison Guaranty. McDougal agrees to give some of Madison Guaranty's legal work to Hillary Clinton.
9/25/84	The Board of Madison Bank & Trust meets and discusses fees it owes Rose and instructs Gary Bunch to negotiate a settlement with the firm.
10/9/84	Vince Foster writes a letter to Madison Bank President Gary Bunch confirming a previous conversation about Rose fees, enclosing a copy of the $5,893.63 bill from July 1982.

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10/22/84 Madison Guaranty pays Rose $5,000 in settlement of the old legal bill.

10/22/84 Hillary Clinton writes to Jim McDougal asking that he have her reimbursed for her payment of Marion County real estate taxes. She further asked him to procure an extension of the Security Bank loan.

11/6/84 Bill Clinton is re-elected Governor of Arkansas.

11/27/84 At a board meeting of Madison Bank and Trust, a decline in net worth is noted due to having paid the legal bill.

12/22/84 Telephone message reflecting a call from Jim McDougal to Governor Clinton reads "Beverly Bassett for Securities Commissioner."

1985

1/16/85 Governor Clinton appoints Beverly Bassett Schaffer the Arkansas State Securities Commissioner. She is also the Arkansas Savings and Loan Supervisor.

2/7/85 McDougal memo to Governor Clinton recommends Madison Guaranty President John Latham and Dr. Jerry Kendall to fill vacancies on the Savings & Loan Board.

3/7/85 Governor Clinton appoints Latham and Dr. Kendall to the Savings & Loan Board.

4/3/85 Charles Handley of the Arkansas Securities Department sends Beverly Bassett a handwritten memo regarding whether or not a state-chartered savings and loan could issue preferred stock, noting he has advised Madison Guaranty it cannot do so.

4/4/85 Jim McDougal hosts a fundraiser at Madison Guaranty to help Governor Clinton retire his 1984 gubernatorial race campaign debt. Affiliates and employees of Madison Guaranty contribute approximately $30,000.

4/9/85 Flowerwood Farms uses part of the proceeds from a $135,000 loan from Stephens Bank to make a $24,455 check denoted "loan" to Whitewater Development Corporation.

4/23/85 Whitewater Development Corporation $30,000 check to Jim McDougal.

4/23/85 Hillary Clinton has appointment with Jim McDougal at Madison Guaranty.

4/23/85 Rose's first billing entry relative to its representation of Madison Guaranty in re:

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stock offering.

4/29/85 Hillary Clinton bills Madison Guaranty for telephone conferences with Beverly Bassett and Richard Massey.

4/30/85 Rose sends Madison Guaranty's stock offering plan to the Arkansas State Securities Commission, directing the Commission to address any inquiries to Hillary Clinton or Richard Massey of the Rose firm.

5/4/85 Jim McDougal and Chris Wade execute a security release agreement for the twenty-four remaining Whitewater lots. In exchange for the lots, Wade transferred to McDougal a 1979 Piper Seminole.

5/14/85 Beverly Bassett letter to Hillary Clinton, agreeing with the Rose Firm's views regarding a preferred stock offering by Madison Guaranty.

5/23/85 Hillary Clinton writes Jim McDougal, forwarding a copy of Bassett's 5/14/85 letter.

6/27/85 Discussions begin regarding the possible sale of property owned by the Industrial Development Commission (IDC) to Madison Guaranty or its affiliates for $3.5 million.

7/11/85 Jim McDougal prepares a memo to John Latham, stating Latham should tell McDougal of everything he has pending before the Securities Commission because McDougal expected to meet with Hillary Clinton soon.

8/2/85 Webb Hubbell opens up Madison Guaranty Matter Number Five at Rose.

8/20/85 Madison Financial Corporation's Board of Directors authorizes the purchase of all real and personal property owned by the IDC for $1.75 million. Seth Ward was authorized to act as an employee and agent of the corporation for the purpose of executing purchase documents.

9/24/85 Jim McDougal and Seth Ward sign agreements delineating their respective roles and obligations in the purchase of the IDC tract.

10/4/85 Seth Ward and Madison Financial Corporation purchase 1,050 acres from the IDC. Ward's $1.15 million purchase of a portion of the land and the utility system was entirely financed by a non-recourse loan from Madison Guaranty. Madison Guaranty begins the Castle Grande project.

10/25/85 Madison Guaranty loans Jim Guy Tucker $260,000 to purchase 34 acres of land

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from Madison Financial Corporation.

11/20/85 Jim McDougal writes a memo to Seth Ward detailing land sales from the IDC tract. McDougal says he has spoken with the Governor about the anticipated construction of a microbrewery on the land, and expects it to be approved.

12/31/85 Jim Guy Tucker incorporates Castle Sewer & Water (CSW). Tucker has two-thirds of the shares and R.D. Randolph one-third.

1986

1/3/86 Rick Donovan writes a memo to Hillary Clinton regarding Madison Guaranty and the Alcoholic Beverage Control Board.

1/86 David Hale tells Bill Watt during a telephone conversation that Governor Clinton had inquired, "did you get my deal done?" and "did you help my friends?"

1/86 Hillary Clinton writes an undated memo to Rick Donovan, informing Donovan she had met with Seth Ward and gave Ward a copy of Donovan's earlier memo. She directed Donovan to see Ken Shemin about approaching the ABC Board.

1/15/86 Governor Clinton and Jim McDougal meet at the Governor's Mansion. According to a telephone message slip, the purpose was for Clinton to sign personal business papers.

1/15/86 Seth Ward transfers ownership of the remainder of the property held in his name, excluding Holman Acres, to Madison Financial Corporation.

1/23/86 Rick Donovan writes a follow-up memo to Hillary Clinton regarding Madison Guaranty and the ABC Board alternatives.

1/30/86 Rose bills Madison Guaranty for the work of several attorneys, including Hillary Clinton. Matters billed include telephone conferences with state agencies and research into state law governing liquor permits.

2/11/86 International Paper corporate memo reflects a meeting of its officials with Jim McDougal regarding International Paper's selling the Woodson Lateral Tract, located just south of the IDC property. Included are references to water services being provided by the utility owned by McDougal.

2/17/86 Rick Donovan writes a memo to Hillary Clinton regarding whether or not Madison Guaranty or IDC should become a public utility and sell water services to businesses and outside real estate developments.

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2/28/86 Madison Guaranty loans $825,000 to Dean Paul, Ltd. for the purchase of three pieces of property from Hale.

2/28/86 Madison Guaranty loans $1.05 million to CSW for the purpose of financing CSW's purchase of a sewer and water system then owned by Madison Financial Corporation (but purchased on 10/4/85 in Seth Ward's name).

2/28/86 Hillary Clinton bills Madison Guaranty for 0.8 hours in re: "Seth Ward."

2/28/86 Capital Management Services loans $150,000 to CSW to be used as a down payment for the purchase of a sewer and water system.

3/4/86 The FHLBB begins another exam of Madison Guaranty.

3/4/86 Jim and Susan McDougal, as corporate President and Secretary, respectively, sign a contract on behalf of the Whitewater Development Company to purchase a portion of the Woodson Lateral Tract (which would become Lorance Heights).

3/4/86 Jim McDougal meets with Governor Clinton and persons from the Arkansas Board of Health. According to McDougal, he privately tells Clinton the Whitewater Corporation is in the process of buying land from International Paper and the deal will make them whole again.

3/4/86 Rick Donovan writes a memo to Hillary Clinton regarding Madison Guaranty and the IDC's ability to provide water services to potential customers within the city limits. The memo documents Donovan's conversations with state agencies on the point.

3/19/86 Jim McDougal has a loan application prepared, seeking $300,000 for Susan McDougal d/b/a Master Marketing.

3/31/86 Madison Guaranty loans Seth Ward $400,000, using Holman Acres as security.

4/3/86 Capital Management Services loans $300,000 to Susan McDougal d/b/a Master Marketing.

4/4/86 Madison Financial Corporation authorizes itself to borrow $300,000 from Seth Ward.

4/7/86 Madison Financial Corporation executes a $300,000 note to Seth Ward.

4/21/86 Using part of the proceeds of the $300,000 loan to Susan McDougal, Jim

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	McDougal writes a check to International Paper Realty Corporation for $25,000, as a down payment for Whitewater Development's purchase of the Lorance Heights property.
5/1/86	Hillary Clinton bills Madison Guaranty for conferences with Seth Ward and Mike Schaufele and the preparation of an option agreement. Madison Guaranty officials later utilize the option agreement in concealing the true nature of the Ward-Madison Guaranty relationship.
5/29/86	Federal examiners meet with Madison Guaranty management to express a number of concerns, including Castle Grande.
6/86	Susan McDougal receives $85,000 in commissions through Madison Financial Corporation's sale of sewer and water systems to CSW.
6/19/86	The FHLBB sends a letter to Madison Guaranty's Board of Directors, setting interim conditions and requiring a meeting in Dallas.
7/2/86	Beverly Bassett forwards the 6/19/86 FHLBB letter to Sam Bratton of the Governor's staff. She suggests they talk about it because of Governor Clinton's relationship with McDougal.
7/10/86	Rose distributes a memo to all attorneys, stating the FSLIC has requested the firm not take on any new savings and loan representation, particularly with respect to those in financial difficulty.
7/11/86	Richard Massey responds to the 7/10/86 Rose memo, noting "[f]or about the past year, Hillary & I have represented Madison Guaranty S&L. Madison has continually had regulatory net worth problems."
7/11/86	The FHLBB meets in Dallas with the Madison Guaranty Board of Directors and instructs the directors to immediately remove McDougal and Latham.
7/14/86	Betsey Wright writes a memo to Governor Clinton regarding her worries about Governor Clinton's ownership of Whitewater stock in light of Jim McDougal's problems.
7/14/86	Hillary Clinton writes Madison Guaranty, returning Madison's most recent $2,000 monthly retainer check, as well as Madison's outstanding credit with Rose of $4,622.53.
8/15/86	The FSLIC executes a cease and desist order against Madison Guaranty.

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11/4/86 Bill Clinton is re-elected Governor of Arkansas for a newly established four-year term.

10/10/86 The McDougals, acting for Whitewater Development Corporation, close on the purchase of 810 acres from International Paper that would become the Lorance Heights development.

12/15/86 Whitewater Development Corporation transfers Lorance Heights to the Great Southern Land Company for $1,000. The Clintons deducted $10,131 for interest paid to the Great Southern Land Company on their 1986 tax return.

1987

1/23/87 FBI Little Rock notifies U.S. Attorney George Proctor it has opened an investigative case on McDougal and Madison.

3/3/87 Jeffrey Gerrish, Special Counsel from Borod & Huggins, delivers his investigative report to the Madison Guaranty Board of Directors.

3/19/87 Madison Guaranty sends a criminal referral to various authorities as a result of the Borod & Huggins report.

3/26/87 The McDougals and the Clintons execute guarantees on Whitewater Development Corporation notes.

3/27/87 Marlin Jackson writes Hillary Clinton requesting she and Governor Clinton sign an extension agreement for the loan so the Security Bank of Paragould's paperwork would be complete.

4/14/87 Nancy Hernreich writes a memo to Governor Clinton regarding an angry visit from R.D. Randolph prompted by Clinton's veto of a water bill. She stated Randolph cryptically mentioned a prior meeting between Governor Clinton, Jim Guy Tucker, and Jim McDougal, which involved $33,000. Randolph further requested Governor Clinton call Tucker on the issue.

5/19/87 Sam Bratton writes a memo to Governor Clinton regarding sewer district regulation legislation. Bratton reported he had spoken with Tucker, who in turn said Madison Guaranty Savings & Loan purchased the water and sewer company when it purchased the old Little Rock Industrial Park area.

6/1/87 The FHLBB subpoenas Seth Ward for documents related to Designer Construction, Madison Guaranty, Madison Financial Corporation, Madison Marketing, or any affiliated entity. Ward informed Webster Hubbell of the

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subpoena.

6/6/87 Capital Management Services loans D&L Telecommunications $300,000. Jim Guy Tucker and William Marks used the proceeds to help obtain a larger loan from Fleet Bank to buy further cable television interests.

9/3/87 Seth Ward sues Madison Guaranty seeking to recover more than $400,000 in real estate commissions.

9/87 Hillary Clinton bills Madison Guaranty $500 for her work on general matters.

1988

1/88 Hillary Clinton repurchases Lot 13 from the bankruptcy trustee.

4/4/88 Marlin Jackson writes Hillary Clinton to inform her the Whitewater Development Corporation had not made requisite payments and she should make interest payments in order to make the loan current.

5/88 Seth Ward is deposed about the option agreement involved in his suit against Madison Guaranty.

7/21/88 Rose's Mary Russell requests instruction from Hillary Clinton regarding whether or not to keep, microfilm, or destroy particular Rose files. Hillary Clinton designates all of her Madison Guaranty files for destruction, including one titled "Ward Option."

8/31/88 Seth Ward wins a favorable jury verdict in his suit for sales commissions against Madison Guaranty.

9/88 Payments ceased on the International Paper mortgage on the Lorance Heights property. International Paper filed suit seeking foreclosure against Whitewater Development and others.

11/1/88 Vince Foster writes a memo to all Rose attorneys regarding the firm's bid to represent the FHLBB and the FSLIC. Attached to the memo were summaries of key people and transactions at six institutions, including Madison Guaranty. Problem loans and affiliated persons at Madison included Maple Creek Farms, Castle Grande, Chris Wade, Don Denton, Madison Marketing, Jim Henley, and West Arkansas Construction.

11/15/88 Madison employee Henry Floyd brought his 1979 Mercury Marquis to Johnny's Transmission in Mablevale, Arkansas for repair work. The car's trunk contained

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Madison Guaranty documents.

11/28/88 Hillary Clinton writes Jim McDougal seeking a power of attorney agreement from he and Susan McDougal in order to allow Chris Wade to sell off certain lots.

1989

2/28/89 Madison Guaranty is declared insolvent. The FSLIC appoints a conservator for Madison Guaranty; the FDIC serves as managing agent for the conservatorship.

2/28/89 Vince Foster writes the FDIC on behalf of Rose, stating the firm would appreciate the opportunity to bid upon legal work arising from conservatorships and receiverships of Arkansas thrifts. The letter states Foster and Webb Hubbell would supervise any necessary investigation and litigation.

3/89 The FDIC determines the law firm of Gerrish and McCreary has a conflict of interest due to its prior work defending directors of failed banks. An agency attorney contacts Rose about representing the government's interest in Madison v. Frost.

3/21/89 Webb Hubbell sends a memo to all Rose attorneys regarding potential conflicts of interest arising from the FDIC's appointment of the firm to represent Madison Guaranty's conservator in the Frost litigation.

6/8/89 An FDIC attorney questions the agency's retention of Rose in light of the appellate litigation between Webb Hubbell's father-in-law, Seth Ward, and Madison Guaranty.

8/9/89 The Resolution Trust Corporation is created to serve as a receiver or conservator for any savings and loan that closed after 1/1/89.

9/20/89 Hillary Clinton sends Jim McDougal a power of attorney form. The letter asserts Chris Wade required the form be completed so Hillary Clinton could sign various documents on behalf of Whitewater Development.

11/89 Jim McDougal, Jim Henley, and David Henley are indicted in Arkansas.

1990

5/7/90 Sam Heuer writes Webb Hubbell regarding his desire to interview Seth Ward for McDougal's upcoming trial. The letter notes Ward may have some criminal exposure.

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5/25/90 Bruce Lindsey withdraws $30,000 in cash from the Clinton gubernatorial campaign account at the Perry County Bank. No currency transaction report (CTR) is filed with the IRS.

5/29/90 The criminal trial of Jim McDougal, Jim Henley, and David Henley begins. Rose attorneys attend the trial and bill the RTC for their time in the Frost litigation.

6/7/90 Jim McDougal and Jim Henley are acquitted of bank fraud. The charges against David Henley were dismissed at the end of the prosecution's case.

6/7/90 Governor Clinton calls McDougal to congratulate him on his acquittal and then asks for $3,000 to be spent on Whitewater.

6/17/90 The Arkansas Democrat prints an article asserting the Castle Grande "bargain" took root twenty years ago.

7/90 Hillary Clinton and Sam Heuer meet for lunch, talking about Whitewater and Jim McDougal's trial.

11/2/90 The Clinton gubernatorial campaign withdraws $22,500 in cash from the Perry County Bank. No CTR is filed with the IRS.

11/6/90 Governor Clinton is re-elected to another four-year term.

1991

2/26/91 The RTC approves the settlement of Madison v. Frost for $1.025 million.

10/3/91 Governor Clinton announces his candidacy for President of the United States.

1992

2/11/92 A reporter examines Madison Guaranty file at the Arkansas Securities Department. A department official notifies the Clinton campaign.

2/12/92 Either Vince Foster or Webb Hubbell direct the Rose accounting office to print a copy of the firm's Madison Guaranty billing summary from 1985-1986, for Hillary Clinton as billing partner.

3/8/92 The New York Times prints an article concerning the Clintons' dealings with Madison Guaranty and Whitewater.

3/11/92 Jim McDougal is interviewed by Clinton adviser Jim Blair and a Clinton

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campaign attorney. McDougal tells about Whitewater and Governor Clinton's role in Madison's hiring of Hillary Clinton to handle some of Madison's legal work.

9/1/92 The RTC forwards a criminal referral to the FBI and the U.S. Attorney in Little Rock regarding Jim McDougal's fraudulent use of different bank accounts at Madison Guaranty, including that of Whitewater Development.

11/3/92 Bill Clinton is elected President of the United States.

12/22/92 Bill and Hillary Clinton transfer their interest in Whitewater Development to Jim McDougal for $1,000. Jim Blair provides the $1,000.

1993

1/20/93 Bill Clinton is inaugurated President of the United States. Webb Hubbell joins the Department of Justice. Vince Foster becomes Deputy White House Counsel.

3/24/93 Deputy Treasury Secretary Roger Altman faxes press clips about Whitewater to White House Counsel Bernard Nussbaum. Altman is simultaneously acting as head of the Resolution Trust Corporation.

5/25/93 The Small Business Administration forwards a criminal referral to the FBI regarding David Hale's Capital Management Services.

5/31/93 RTC criminal investigators arrive in Arkansas for a follow-up Madison Guaranty investigation. Visit included Little Rock and Marion County.

6/16/93 Jim McDougal calls the White House to speak with Vince Foster.

6/21/93 Vince Foster causes Whitewater corporate tax returns for 1989 through 1991 to be sent to Jim McDougal.

7/20/93 The FBI obtains a search warrant for David Hale's Little Rock offices as part of its investigation into Capital Management Services.

7/20/93 Vince Foster commits suicide. Maggie Williams, Susan Thomases, and Hillary Clinton talk by phone. Bernard Nussbaum, Patsy Thomasson, and Williams visit Foster's office.

7/21/93 Hillary Clinton calls Williams and Thomases from Little Rock regarding investigators access to Foster's office.

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7/21/93	The FBI searches Hale/CMS offices in Little Rock.
7/22/93	Nussbaum searches documents in Foster's office, but denies Park Police and Justice Department investigators direct access to the documents.
7/26/93	A torn-up note is found in Foster's briefcase.
8/16/93	Paula Casey takes office as U.S. Attorney in Little Rock.
9/93	Casey rejects David Hale's efforts at a plea bargain.
9/20/93	Jim Blair calls Bruce Lindsey at the White House to report on Hale's visit to Jim McDougal and possible future charges.
9/23/93	David Hale, Charles Matthews, and Eugene Fitzhugh are indicted for fraud. Hale makes public allegations about Governor Tucker and President Clinton.
9/24/93	RTC-Kansas City breaks from standard practice and forwards nine criminal referrals related to Madison Guaranty to the RTC's Washington office instead of directly sending them to local authorities.
9/24/93	Casey advises the FBI she will recuse from Madison referrals.
9/29/93	Treasury Department General Counsel Jean Hanson alerts Nussbaum the RTC plans to issue criminal referrals on Madison Guaranty.
10/4/93	Bruce Lindsey tells President Clinton of the RTC referrals.
10/6/93	Governor Jim Guy Tucker visits President Clinton at the White House.
10/8/93	RTC-Washington forwards nine criminal referrals to U.S. Attorney and FBI-Little Rock.
10/14/93	White House officials meet with Department of Treasury officials concerning RTC criminal referrals.
10/27/93	Casey declines to investigate the first RTC criminal referral.
11/5/93	The Clintons' private attorneys meet with White House attorneys regarding Whitewater. White House Counsel's Office attorney William Kennedy takes extensive notes.
11/9/93	Casey recuses herself from matters involving Madison Guaranty.

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11/9/93	The Justice Department's Criminal Division (Fraud Section) takes charge of matters involving Madison Guaranty and Capital Management Services.

1994

1/12/94	President Clinton requests Attorney General Janet Reno appoint a regulatory independent counsel to take over the Whitewater investigation.
1/20/94	Attorney General Reno names Robert Fiske regulatory Independent Counsel for the Whitewater investigation.
2/2/94	Roger Altman, still acting head of the RTC, meets with Nussbaum and other White House staff regarding the Madison Guaranty probe.
2/9/94	RTC subpoenas Rose for all records relating to Madison Guaranty and Madison Financial Corporation.
2/24/94	Altman gives incomplete testimony to the Senate Banking Committee about White House-RTC contacts on the Madison Guaranty referrals.
2/25/94	Altman recuses himself from the Madison Guaranty investigation and announces he will step down as acting head of the RTC.
2/28/94	Eggleston sends Ickes a memo on Whitewater - FDIC and RTC Rose Law Firm Issues, attaching FDIC and RTC reports.
3/1/94	Ickes forwards Eggleston's 2/28/94 memo to Hillary Clinton.
3/2/94	The press first reports an investigation of Webb Hubbell's Rose billing practices.
3/13/94	At the end of a White House meeting, Mack McLarty, White House Chief of Staff, advises Hillary Clinton "we are going to try to be helpful to Webb."
3/14/94	Webb Hubbell announces his resignation from the Department of Justice, effective 4/8/94.
4/8/94	Webb Hubbell resigns his position as Associate Attorney General.
5/24/94	Regulatory Independent Counsel Fiske issues grand jury subpoena to President and Hillary Clinton for documents, including any documents relating to Madison Guaranty. The return date for the records is 6/28/94.

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6/12/94	Regulatory Independent Counsel Fiske deposes President and Hillary Clinton at the White House regarding Vince Foster's death.
6/27/94	Hong Kong China Limited wires approximately $100,000 to Webb Hubbell. Earlier that week, James Riady agreed to hire Hubbell at a rate of $25,000 a quarter.
6/30/94	President Clinton signs the Independent Counsel Reauthorization Act of 1994 into law.
6/30/94	Regulatory Independent Counsel Fiske concludes he will not bring charges in the White House-RTC contacts investigation. Fiske also issues a report finding that Vincent Foster Jr. committed suicide in Fort Marcy Park.
7/1/94	Attorney General Reno applies to the Special Division for the appointment of a statutory independent counsel.
7/26/94	Whitewater hearings begin in Congress.
8/1/94	The White House concedes that Whitewater files removed from Foster's office were kept for five days in the Clinton's residence before being turned over to their personal lawyer.
8/5/94	Kenneth W. Starr appointed Independent Counsel by the Special Division.
8/9/94	Independent Counsel Starr requests the Attorney General refer jurisdiction over the relationship between the 1990 Clinton gubernatorial campaign and the Perry County Bank.
8/31/94	Independent Counsel Starr petitions the Special Division to refer jurisdiction over the billing and expense practices of Webb Hubbell while a member of Rose.
8/31/94	Independent Counsel Starr requests the Attorney General refer jurisdiction over matters relating to the bankruptcy of Landowners Management Systems, Inc.
9/1/94	The Special Division grants OIC's 8/31/94 jurisdictional request.
9/2/94	The Attorney General approves OIC's 8/9/94 and 8/31/94 jurisdictional requests.
9/12/94	OIC notifies Webb Hubbell it can prove he intentionally and falsely billed more than $350,000 to Rose or its clients.
9/16/94	Hillary Clinton responds by affidavit to questions from the FDIC OIG regarding

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her work at Rose on behalf of Madison Guaranty.

9/26/94 Chairman of the Senate Whitewater Committee sends referral to OIC contending Josh Steiner and Jean Hanson lied before the Senate Banking Committee.

10/6/94 Regulatory Independent Counsel Fiske files his final report regarding Madison Guaranty.

10/25/94 Bruce Lindsey appears before the Little Rock grand jury.

10/25/94 Independent Counsel Starr requests the Attorney General refer jurisdiction over matters related to Chris and Rosalee Wade, which had been previously investigated by Mr. Fiske.

11/8/94 Jim Guy Tucker is elected Governor of Arkansas, after serving in that capacity for approximately two years upon Governor Clinton's election to the Presidency.

11/10/94 Hillary Clinton is interviewed by FDIC OIG regarding her work at Rose on behalf of Madison Guaranty.

12/5/94 Real estate appraiser Robert Palmer pleads guilty to one count of conspiracy and agrees to cooperate with the Independent Counsel's ongoing investigation.

12/6/94 Webb Hubbell pleads guilty to mail fraud and tax evasion and agrees to cooperate with the Independent Counsel's ongoing investigation.

12/7/94 The Attorney General approves the Independent Counsel's jurisdictional request in re: Chris and Rosalee Wade.

12/13/94 Date of "Task List" by Jane Sherburne, Associate White House Counsel, which includes a reference to monitoring Hubbell's cooperation with the Independent Counsel.

12/19/94 The Special Division endorses OIC jurisdictional referrals regarding the 1990 Clinton gubernatorial campaign and Chris and Rosalee Wade.

1995

1/3/95 Senate Committee on Banking, Housing, and Urban Affairs releases its report on Foster Death and White House-Treasury-RTC contacts.

1/3/95 Washington, D.C. grand jury testimony begins in Foster death investigation.

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1/3/95	As a result of his 6/23/94 guilty plea, Charles Matthews is sentenced to sixteen months in prison for the improper receipt of gifts.
2/1/95	Webb Hubbell produces Rose's original Bank of Kingston file to OIC.
2/28/95	Neal Ainley is indicted on five felony counts related to currency transaction reports and the 1990 Clinton gubernatorial campaign.
3/2/95	White House Counsel's Office attorney Bill Kennedy refuses to answer questions about Whitewater before the Washington, D.C. grand jury claiming his representation of Hillary Clinton was privileged; Kennedy also refuses to answer questions about the Travel Office based on instructions from the White House Counsel.
3/21/95	Chris Wade pleads guilty to two felonies and agrees to cooperate with the Independent Counsel's ongoing investigation.
3/24/95	Hillary Clinton answers OIC interrogatories regarding the April 1985 Madison Guaranty fundraiser, her relationship with Jim McDougal, and the Bank of Cherry Valley.
3/30/95	Jim Guy Tucker moves under seal to discharge the grand jury from consideration of Landowners Management Systems, Inc. bankruptcy reorganization.
3/31/95	President Clinton answers OIC interrogatories regarding his fundraising practices in 1984 and 1985, his relationships with Jim McDougal and Maurice Smith, and the Bank of Cherry Valley.
4/13/95	Eugene Fitzhugh's motion to withdraw his 6/23/94 guilty plea is denied. Fitzhugh is sentenced to one year of imprisonment and one year of probation.
4/22/95	OIC attorneys interview President and Hillary Clinton in sworn interviews at the White House. Topics include the April 1985 Madison Guaranty fundraiser, 1990 gubernatorial campaign financing, Madison Guaranty's retainer of Hillary Clinton, and the work Hillary Clinton did for Madison Guaranty.
4/24/95	OIC responds in opposition to Tucker's Motion to Discharge the grand jury.
5/2/95	Neal Ainley pleads guilty to willfully delivering and disclosing fraudulent documents to the Secretary of the Treasury and agrees to cooperate with the Independent Counsel's ongoing investigation.

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5/2/95	Fitzhugh appeals the District Court's denial of his motion to withdraw his guilty plea.
5/17/95	The Senate Special Committee to Investigate Whitewater Development Corporation and Related Matters is created.
5/24/95	President and Hillary Clinton respond to RTC interrogatories. Topics include the consummation of the Whitewater real estate development and Hillary Clinton's representation of Madison Guaranty.
5/31/95	The Court denies Tucker's Motion to Discharge the grand jury during a sealed hearing.
6/7/95	Jim Guy Tucker, Bill Marks, and John Haley are indicted on one count of conspiracy to defraud the IRS and two counts of fraud related to a loan from Hale's SBIC, Capital Management Services.
6/8/95	Steve Smith pleads guilty to a misdemeanor of conspiracy to misapply the funds of a Small Business Investment Company and agrees to cooperate with the Independent Counsel's ongoing investigation.
6/8/95	Independent Counsel Starr requests the Attorney General refer jurisdiction over potential bank crimes by Herby Branscum Jr. and Robert Hill.
6/16/95	Robert Palmer is sentenced to three years of probation, including one year of home detention, and fined $5,000.
6/21/95	The Attorney General approves the Independent Counsel's jurisdictional request regarding Branscum and Hill.
6/23/95	Independent Counsel Starr requests the Attorney General clarify jurisdictional mandates regarding potentially fraudulent land purchases in Lee County, Arkansas by the Arkansas Development Finance Authority or the Arkansas Department of Corrections.
6/28/95	The Attorney General finds the subjects of the Independent Counsel's 6/23/95 inquiry related to its existing jurisdiction and refers the matter to OIC.

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6/28/95	Webb Hubbell is sentenced to twenty-one months in prison, three years of probation, and $135,000 in restitution for mail fraud and tax evasion.
7/9/95	A confidential witness observes Hillary Clinton carrying a box of documents to the third floor of the White House.
7/11/95	White House "Prep Session" for Hillary Clinton's upcoming OIC interview.
7/13/95	Larry Kuca pleads guilty to a misdemeanor of conspiracy to misapply the funds of a Small Business Investment Company.
7/20/95	The Acting Inspector General of the FDIC sends OIC a criminal referral involving conflicts of interest involving Rose members.
7/22/95	OIC attorneys question the Clintons at the White House. Topics covered include Madison Guaranty, Capital Management, Vince Foster's death, and the removal of documents from Foster's office.
7/25/95	Bruce Ericson, attorney for the RTC, teleconferences with David Kendall about Jim McDougal's past debts and McDougal's retainer of Rose.
7/28/95	The Special Division endorses the Attorney General's jurisdictional referrals regarding potentially fraudulent land transactions in Lee County, Arkansas, as well as the matters involving Branscum and Hill.
7/28/95	FDIC OIG issues a report on Rose Law Firm conflicts of interest, concluding the Firm had concealed actual and potential conflicts of interest, especially with regard to the Frost case.
8/3/95	RTC OIG issues a report on Rose Law Firm conflicts of interest, making findings similar to those in the 7/28/95 FDIC report.
8/7/95	Webb Hubbell reports to FCI Cumberland to begin serving sentence.
8/10/95	Webb Hubbell testifies before House Banking Committee alongside RTC's April Breslaw.

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8/17/95	Jim Guy Tucker, Jim McDougal, and Susan McDougal are indicted for conduct related to Madison Guaranty and Capital Management Services.
9/5/95	Senior U.S. District Judge Henry Woods holds OIC exceeded its jurisdiction and dismisses the Tucker, Marks, and Haley indictment.
9/25/95	The Assistant Inspector General of the RTC sends OIC a criminal referral involving conflicts of interest involving Rose members.
9/29/95	OIC informs the Attorney General of the FDIC and RTC criminal referrals and inquires as to the Independent Counsel's jurisdiction over the matters.
10/11/95	Larry Kuca sentenced to two years of probation, eighty hours of community service, and ordered to pay restitution of $65,862.
12/1/95	Chris Wade sentenced to fifteen months in prison, three years of probation, and is ordered to pay a $3,000 fine.
12/1/95	Senate Whitewater Hearings. Randy Coleman, Paula Casey, Michael Johnson, and Fletcher Jackson testify regarding the U.S. Attorney's handling of the Hale prosecution. Webb Hubbell testifies about Hillary Clinton's and Rose's representation of Madison Guaranty.
12/5/95	Rose's Ron Clark testifies before the Little Rock grand jury regarding Rose files and records relating to Hillary Clinton's and Rose's legal work for Madison Guaranty and Madison Bank.
12/6/95	Rose attorneys and Hillary Clinton's former Rose secretary appear before the Little Rock grand jury.
12/7/95	Jim Blair testifies before the Little Rock grand jury regarding his 1992 interview of Jim McDougal regarding Whitewater and Governor Clinton's role in obtaining Madison Guaranty's legal work for Hillary Clinton.

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12/12/95 The Eighth Circuit Court of Appeals holds oral arguments regarding the indictment of Tucker, Marks, and Haley; the Eighth Circuit also hears oral arguments in the Fitzhugh appeal of 5/2/95.

12/12/95 Deputy White House Counsel Bill Kennedy refuses to produce to Senate Committee subpoenaed notes of 11/5/93 meeting of government attorneys and the Clinton's attorneys.

12/13/95 Pillsbury Madison & Sutro delivers a supplemental report to the RTC on Madison Guaranty and the Whitewater Development Corporation.

12/15/95 Senate Whitewater Committee votes to enforce subpoena to Bill Kennedy for his notes of the 11/5/93 Meeting.

12/18/95 John Nields, attorney for Webb Hubbell, advises OIC that Hubbell had given to him, and he to Kendall, various Hillary Clinton time sheets from 1987 to 1989. These documents had not been previously produced to OIC.

12/18/95 OIC receives newly discovered documents from 1992 Clinton campaign attorney Loretta Lynch.

12/19/95 Webb Hubbell testifies before the Little Rock grand jury regarding Hillary Clinton's and Rose's representation of Madison Guaranty.

12/19/95 Pillsbury Madison & Sutro delivers to the RTC "A Report on Certain Real Estate Loans and Investments Made by Madison Guaranty Savings & Loan and Related Entities."

12/20/95 Full Senate votes to enforce the Bill Kennedy subpoena.

12/21/95 White House drops its claim of attorney-client privilege and agrees to produce Kennedy's notes of the 11/5/93 meeting, which include the phrase "vacuum Rose Law Files."

12/21/95 RTC Investigators first learn Hillary Clinton prepared an option agreement between Seth Ward and Madison Financial Corporation. RTC sent new interrogatories to Hillary Clinton via her counsel the same day.

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12/28/95 Pillsbury Madison & Sutro delivers to the RTC "A Report on the Representation of Madison Guaranty Savings & Loan by the Rose Law Firm."

1996

1/5/96 David Kendall, private counsel to the President and Hillary Clinton, produces copies of Rose billing records and billing memoranda regarding Madison Guaranty, eighteen months after the corresponding subpoena was issued by the grand jury.

1/11/96 U.S. District Judge George Howard Jr. alerts parties that Senate subpoenas to Defendants Jim Guy Tucker, Jim McDougal, and Susan McDougal may cause him to delay their anticipated 3/4/96 trial date.

1/16/96 Three day pre-trial hearing begins in prosecution of Jim Guy Tucker, Jim McDougal, and Susan McDougal.

1/17/96 Seth Ward and Jim Blair testify before the Little Rock grand jury. Blair produces $1,000 check to "Sam Heuer, Trustee for Jim McDougal" dated 12/22/92, which had been used to buy out the Clinton's share of Whitewater for Jim McDougal.

1/17/96 The Department of Justice Criminal Division responds to the Independent Counsel's 9/29/95 inquiry regarding OIC's jurisdiction over Rose billing matters.

1/18/96 Neal Ainley sentenced to two years of probation, 416 hours of community service, and fined $1,000.

1/19/96 Hillary Clinton is subpoenaed to appear before the Washington, D.C. grand jury.

1/26/96 Hillary Clinton appears before the Washington, D.C. grand jury and answers questions regarding the production of the Rose billing records for Madison Guaranty.

2/14/96 Hillary Clinton is interviewed by the FDIC regarding Rose billing records and her work for Madison Guaranty.

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2/20/96	Herby Branscum Jr. and Robert Hill are indicted for eleven felonies related to the operation of the Perry County Bank in Perryville, Arkansas.
2/25/96	Pillsbury Madison & Sutro delivers to the FDIC "A Supplemental Report on the Representation of Madison Guaranty Savings & Loan by the Rose Law Firm."
2/29/96	Betsey Wright testifies before the Little Rock grand jury.
3/4/96	The trial of Jim Guy Tucker, Jim McDougal, and Susan McDougal begins in Little Rock.
3/15/96	The Eighth Circuit Court of Appeals overturns the 9/5/95 dismissal of the indictment against Tucker, Marks, and Haley and directs that Judge Woods be removed from the case upon its return to the District Court; the Eighth Circuit affirms Fitzhugh's conviction but remands for resentencing.
3/25/96	David Hale is sentenced to twenty-eight months in prison and ordered to pay more than $2 million in restitution and a $10,000 fine.
3/25/96	Webb Hubbell's prison telephone conversations with wife Suzie Hubbell are recorded. Suzie Hubbell, in reference to a visit from a White House staffer, says she feels like she is part of a "royal squeeze play." Webster Hubbell comments about Rose's lawsuit: "I need to roll over one more time."
4/1/96	David Hale begins nine days of testimony in the prosecution of Jim Guy Tucker, Jim McDougal, and Susan McDougal.
4/28/96	The trial testimony of President Clinton as a defense witness in the prosecution of Jim Guy Tucker, Jim McDougal, and Susan McDougal is videotaped.
5/6/96	After a hearing in the prosecution of Jim Guy Tucker, Jim McDougal, and Susan McDougal, Judge Howard dismisses four counts against Jim Guy Tucker and three counts against Susan McDougal.
5/7/96	A second Little Rock grand jury is empanelled to investigate matters within the Independent Counsel's jurisdiction before U.S. District Judge Susan Webber Wright.

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5/7/96	Jim McDougal begins three days of testimony in his own defense.
5/9/96	President Clinton's videotaped testimony is played at the trial of Jim Guy Tucker, Jim McDougal, and Susan McDougal. Defendants rest their case.
5/19/96	Rose files a civil complaint against Webb Hubbell.
5/28/96	Jury convicts Jim Guy Tucker, Jim McDougal, and Susan McDougal. Tucker announces intent to resign as Governor of Arkansas.
6/17/96	Trial of Herby Branscum Jr. and Robert Hill begins in Arkansas.
7/7/96	The trial testimony of President Clinton as a defense witness for Branscum and Hill is videotaped.
7/12/96	Steve Smith sentenced to one year of probation, 100 hours of community service, and fined $1,000.
7/15/96	Jim Guy Tucker steps down as Governor of Arkansas.
7/18/96	President Clinton's videotaped deposition is played in the Branscum and Hill trial.
8/1/96	After six days of jury deliberation, Branscum and Hill are acquitted on four counts. A mistrial is declared on seven other counts.
8/9/96	Jim McDougal begins to cooperate with the government. Judge Howard delays McDougal's sentencing until November 1996.
8/15/96	The Special Division endorses the Attorney General's 1/17/96 referral of jurisdiction to OIC of matters involving Rose.
8/19/96	Jim Guy Tucker sentenced to four years probation, including eighteen months of house arrest and specified community service, and ordered to pay $150,000 in restitution and a $25,000 fine.

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8/20/96	Susan McDougal sentenced to two years in prison, three years of probation, 300 hours of community service, and ordered to pay $300,000 in restitution and a $5,000 fine. After the hearing, she is served with a subpoena to appear before the grand jury.
8/30/96	Susan McDougal tapes a three-hour interview with Diane Sawyer for ABC's Prime Time Live.
9/3/96	Judge Wright denies Susan McDougal's Motion to Quash Grand Jury Subpoena.
9/4/96	Susan McDougal appears before Little Rock grand jury and refuses to answer questions. Judge Wright holds her in contempt.
9/4/96	ABC airs fifteen minutes of its Susan McDougal interview. The next day the Independent Counsel subpoenas the entire interview.
9/9/96	Susan McDougal begins confinement for civil contempt.
9/13/96	OIC announces it will not retry Herby Branscum Jr. and Robert Hill and moves to dismiss the remaining counts against them.
9/16/96	ABC moves to quash OIC's subpoena of the Prime Time Live interview, arguing the footage was protected by the journalist's qualified privilege.
9/23/96	Television interviewer asks President Clinton if he thinks Ken Starr is out to get he and Hillary Clinton. The President replies, "Isn't it obvious?"
9/23/96	FDIC OIG issues Supplemental Report on Rose conflicts of interest, concluding that Hillary Clinton drafted the document Madison Guaranty used to deceive federal examiners in 1986.
10/7/96	The Supreme Court denies certiorari in the Tucker, Marks, and Haley tax case.
10/9/96	The Eighth Circuit Court of Appeals affirms Judge Wright's order holding Susan McDougal in contempt.

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10/24/96	Eugene Fitzhugh is resentenced to ten months in prison.
10/28/96	Hearing in Arkansas on OIC's motion to compel production of White House Counsel's Office notes from the 7/11/95 "Prep Session," as well as Counsel's Office notes of Hillary Clinton's debriefing after her grand jury appearance.
10/31/96	Jim Guy Tucker moves to continue the 12/2/96 trial date of his tax case due to his impending liver transplant.
11/96	OIC investigators locate a microfilmed check from James B. McDougal's trustee account, made payable to Madison Guaranty, in the amount of $5,081.82. "Payoff Clinton" is written in the memo section of the check, which is signed by Susan McDougal.
11/1/96	Little Rock grand jury subpoenas documents from Webb Hubbell after learning of possible payments to Hubbell following his resignation from the Justice Department.
11/5/96	Bill Clinton is re-elected President of the United States.
11/6/96	Judge Wright denies ABC's Motion to Quash OIC's subpoena of their full interview of Susan McDougal.
11/7/96	OIC responds to Susan McDougal's Renewed Motion to Vacate Contempt Order
11/13/96	OIC files Application for Order Compelling Production of Documents from Webb Hubbell.
11/14/96	Judge Wright denies Susan McDougal's Renewed Motion to Vacate Contempt Order.
11/14/96	Judge Reasoner continues trial date of Tucker, Marks, and Haley until March 17, 1997.
11/19/96	Webb Hubbell asserts the Fifth Amendment before the Little Rock grand jury. He produces documents pursuant to an Order of the Court.

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11/26/96 Judge Wright denies OIC's motion to compel the production of Hillary Clinton "prep session" notes from Deputy White House Counsels.

12/2/96 OIC files notice of appeal regarding Judge Wright's 11/26/96 order.

12/3/96 OIC investigators locate a microfilmed cashiers check to "Bill Clinton" from Madison Guaranty, dated 11/15/82, in the amount of $27,600. The unendorsed check was used to pay off the balance of a Madison Bank loan to Whitewater Development.

12/3/96 President Clinton's 4/28/96 videotaped deposition is viewed by the Little Rock grand jury.

12/10/96 Motions hearing in the Tucker, Marks and Haley case. Haley's motion to sever his case from the others is denied.

12/14/96 Susan McDougal, in federal custody for civil contempt, is transferred to federal facilities in California to face state charges of embezzling $150,000 from Zubin Mehta and his wife. She remains jailed for the 9/4/96 civil contempt charges.

12/25/96 Jim Guy Tucker receives a liver transplant.

1997

1/20/97 President Clinton's second inauguration.

2/3/97 FBI reports to OIC the discovery of a 10/9/84 Rose letter from Vince Foster to Madison Bank's Gary Bunch, threatening suit if a past due bill of $5,893.63 is not paid. The document was not included in Rose's production to OIC or in the Rose correspondence file on the matters produced by Hubbell.

2/12/97 Webb Hubbell is released from federal custody.

2/14/97 Additional Little Rock grand jury subpoenas for documents are issued to President and Hillary Clinton.

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3/24/97	OIC files a motion to reduce David Hale's sentence and hold the decision in abeyance.
4/2/97	Jim McDougal begins two days of testimony before the Little Rock grand jury.
4/2/97	Lanny Davis announces at a White House press conference that Mack McLarty and Erskine Bowles made calls on behalf of Webb Hubbell after Hubbell's April 1994 resignation from the Department of Justice.
4/3/97	President Clinton makes statement in defense of McLarty and Bowles. OIC issues subpoenas for McLarty and Bowles.
4/9/97	The Eighth Circuit Court of Appeals overrules Judge Wright's 11/26/96 Order, rejecting the White House's unprecedented assertions of attorney-client and work product privileges as bases for withholding White House Counsel's Office notes from a federal grand jury.
4/14/97	Jim McDougal is sentenced to five years in prison, two of which are suspended. He is further sentenced to three years of probation, twelve months of home confinement with electronic monitoring, and ordered to pay $4,274,301.27 in restitution and a $10,000 fine.
4/17/97	Mack McLarty appears before the Little Rock grand jury and, citing executive privilege, declines to answer some questions about a 3/13/94 meeting between the Clintons, Williams, Ickes, Kendall, and Barnett.
5/2/97	The Eighth Circuit Court of Appeals' decision of 4/9/97 is unsealed.
5/7/97	The Eighth Circuit Court of Appeals rejects Fitzhugh's appeal of his sentence.
5/12/97	White House Counsel's Office and Hillary Clinton petition the Supreme Court for certiorari over the Eighth Circuit's 4/25/97 decision.
5/28/97	OIC files opposition to White House Counsel's Office and Hillary Clinton's petition for certiorari.
6/16/97	Jim McDougal begins serving his prison sentence.

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6/23/97	The Supreme Court denies certiorari in the White House Counsel's Office notes litigation. The notes are produced.
7/10/97	Original Madison Guaranty cashiers check to "Bill Clinton" for $27,600 is recovered from the trunk of a car at Johnny's Transmission in Mablevale, Arkansas following a tornado.
7/15/97	OIC files its final report on of the death of Vincent Foster Jr.
7/23/97	Laura Foster finds Vince Foster's briefcase in their Little Rock attic.
7/31/97	Partial contents of Foster briefcase turned over to OIC.
8/1/97	Counsel for Rose asserts privileges and refuses to turn over several documents found within the Foster briefcase.
8/28/97	Bill Marks pleads guilty to the felony of conspiracy to defraud the United States and agrees to cooperate with the Independent Counsel's ongoing investigation.
11/7/97	Eighth Circuit hears oral arguments regarding Jim McDougal's convictions.
12/23/97	Judge Wright advises OIC of a conversation she had with former U.S. Senator David Pryor, in which he asked her to release Susan McDougal from her contempt incarceration.
12/31/97	Independent Counsel Starr petitions the Special Division to refer to him jurisdiction over Webb Hubbell's financial irregularities since 1/1/94.

1998

1/6/98	Judge Wright, OIC, and attorneys for Susan McDougal teleconference on the Senator Pryor conversation and Susan McDougal's health.
1/16/98	The Eighth Circuit Court of Appeals affirms Jim McDougal's conviction.
2/20/98	Jim Guy Tucker pleads guilty to conspiring to defraud the IRS; John Haley pleads guilty to aiding and abetting others in the willful failure to supply information to the IRS.
2/23/98	The Eighth Circuit Court of Appeals affirms Susan McDougal's 5/28/96 conviction; the Eighth Circuit also ruled there was sufficient evidence to support Tucker's 5/28/96 conviction, but remanded the juror misconduct issue for a hearing in the District Court.

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3/8/98	Jim McDougal dies while imprisoned in Fort Worth, Texas.
3/9/98	Susan McDougal's confinement for civil contempt ends; service of her two-year sentence for four felony convictions begins.
3/15/98	Senator Pryor calls the FBI regarding Karyn Mann's allegations that David Hale was improperly paid monies in Hot Springs, Arkansas.
3/18/98	Jim Guy Tucker testifies before the Little Rock grand jury.
3/31/98	OIC offers Hillary Clinton an opportunity to appear before the Little Rock grand jury before it concludes its work on 5/6/98.
4/6/98	In lieu of appearing before the Little Rock grand jury, David Kendall proposes Hillary Clinton videotape a deposition on 4/25/98 at the White House.
4/21/98	Jim Guy Tucker testifies before the Little Rock grand jury.
4/23/98	Susan McDougal appears before the Little Rock grand jury and refuses to answer questions.
4/25/98	OIC attorneys depose Hillary Clinton at the White House. Topics include the financial arrangements of the Whitewater development, her representation of Madison Guaranty, and efforts to generate consulting work for Webb Hubbell.
4/29/98	Little Rock grand jury views Hillary Clinton's videotaped deposition.
4/30/98	Washington, D.C. grand jury indicts Webb Hubbell, Suzie Hubbell, Charles Owen, and Mike Schaufele on ten felony counts of tax-related offenses.
5/4/98	Little Rock grand jury indicts Susan McDougal for two counts of criminal contempt and one count of obstruction of justice.
5/18/98	William J. Marks is sentenced to four years of probation and ordered to pay restitution of $1,000,000.

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6/25/98 Judge Howard reduces Susan McDougal's sentence to time served, due to McDougal's poor health. A condition of her probation includes ninety days of home detention. The fine and order of restitution against her remain in place.

6/25/98 The Supreme Court holds against OIC in Swidler & Berlin and James Hamilton.

7/1/98 U.S. District Judge James Robertson dismisses the indictments as to all four defendants in the Hubbell tax case.

8/20/98 John Haley is sentenced to three years of probation, eight hours a week of community service, and ordered to pay $40,000 in restitution and a $30,000 fine.

10/23/98 Judge Reasoner files an Order agreeing with OIC on the applicable tax law to be used at Tucker's sentencing in the tax case.

10/28/98 Due to his hospitalization, Tucker's sentencing in the tax case was continued.

11/4/98 Susan McDougal wins a continuance of her Little Rock obstruction trial from 11/30/98 to 2/16/99.

11/13/98 Webb Hubbell indicted in Washington for fraud, false statements, corruptly impeding the functions of two federal regulatory agencies, and perjury before a Congressional committee.

12/3/98 Following remand from the Eighth Circuit Court of Appeals, the Tucker juror misconduct issue is heard in District Court.

1999

1/26/99 D.C. Circuit Court of Appeals reverses Judge Robertson's 7/1/98 dismissal of the Hubbell tax case.

2/17/99 U.S. District Judge George Howard rejects Tucker's claim that alleged juror misconduct entitles him to a new trial.

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3/8/99	Susan McDougal obstruction and criminal contempt trial begins in Little Rock.
3/18/99	Judge Robertson dismisses one of the fifteen counts in the Hubbell fraud case.
4/12/99	Susan McDougal found not guilty of obstruction of justice; a mistrial is declared on two counts of criminal contempt.
5/17/99	Jim Guy Tucker is sentenced in the tax case to four years of probation, including four hours per week of community service. He is ordered to pay $1,000,000 in restitution and a $6,000 fine.
5/25/99	OIC moves to dismiss the remaining counts against Susan McDougal.
6/1/99	D.C. Circuit Court of Appeals reverses Judge Robertson's 3/18/99 dismissal of one of fifteen counts against Webb Hubbell.
6/8/99	OIC receives a copy of the Shaheen Report, which found insufficient credible evidence to support criminal charges regarding alleged payments to David Hale in exchange for testimony.
6/30/99	Webb Hubbell pleads guilty to concealing Rose's conflicts of interest as contained in one count of the 11/13/98 indictment. Hubbell also pleads guilty to willfully failing to pay taxes, as contained in a criminal information, which superseded his 4/30/98 indictment. Following the D.C. Circuit's ruling on the case, the United States agreed it would move to vacate the tax conviction and dismiss the criminal information if the Supreme Court review did not materially improve the government's position. He is sentenced to one year of probation.
6/30/99	The Independent Counsel Act expires. Investigations authorized during the life of the Act remain active under the supervision of the Special Division.
7/26/99	OIC petitions the Supreme Court for certiorari in the Hubbell tax case.
9/13/99	Eighth Circuit Court of Appeals hears oral arguments in the Tucker juror misconduct issue.
10/12/99	The Supreme Court grants OIC's petition for certiorari in the Hubbell tax case.

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10/18/99 Kenneth W. Starr resigns as Independent Counsel; Robert W. Ray is sworn in as Independent Counsel.

12/15/99 In light of Fitzhugh's poor health, the District Court orders him to serve five months in a halfway house, followed by five months of home detention and one year of probation.

2000

1/14/00 Eighth Circuit Court of Appeals hears oral arguments in the Jim Guy Tucker tax fraud case.

2/22/00 The Supreme Court hears oral arguments in the Hubbell tax case.

5/18/00 U.S. District Judge John Nangle declines requests by Francis Mandanici, Steve Smith, and Julie Hiatt Steele to appoint counsel to investigate alleged ethical wrongdoing by Kenneth W. Starr and other OIC attorneys. Judge Nangle also denies another motion seeking the appointment of counsel to investigate alleged ethical wrongdoing by Kenneth W. Starr and other OIC attorneys in connection with a matter occuring before a grand jury in the Western District of Arkansas.

6/5/00 The Supreme Court rules against the government in the Hubbell tax case, holding the indictment had been obtained by the use of testimonial communications that Hubbell had made pursuant to a limited grant of immunity.

7/3/00 Eighth Circuit Court of Appeals reverses and remands the Jim Guy Tucker tax case for resentencing on the restitution issue.

7/9/00 Seth Ward dies in Little Rock.

7/19/00 Eighth Circuit dismisses for lack of jurisdiction Francis Mandanici's appeal of Judge Nangle's decision declining to appoint counsel to investigate Mandanici's allegations of ethical misconduct.

8/16/00 Jim Guy Tucker challenges his fraud conviction by means of a Section 2255 motion.

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8/31/00	OIC closes its Little Rock, Arkansas office.
9/20/00	OIC announces its findings and conclusions in the Arkansas phase of the investigation, effectively closing the Madison Guaranty/Whitewater investigation.
9/29/00	OIC responds to Jim Guy Tucker's Section 2255 motion.
10/19/00	Pursuant to the 6/30/99 plea agreement with Hubbell, OIC moves to vacate Hubbell's conviction and dismiss the criminal information.
10/20/00	Judge Robertson issues an Order granting OIC's 10/19/00 motion.
12/1/00	Judge Reasoner defers Jim Guy Tucker's resentencing hearing pending an IRS determination of actual loss.

2001

1/5/01	Madison Guaranty/Whitewater Final Report received by the Special Division
1/20/01	President Clinton pardons Susan McDougal, Steven Smith, Robert Palmer and Chris Wade.
2/20/01	United States Supreme Court denies Mandanici's petition for certiorari regarding the Eighth Circuit's dismissal of his appeal.
2/27/01	United States Court of Appeals for the Eighth Circuit upholds Jim Guy Tucker's 1996 conviction.

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APPENDIX 5

PROSECUTIONS

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I. PROSECUTION OF CONSPIRACY TO DEFRAUD THE SMALL BUSINESS ADMINISTRATION THROUGH CMS

A. Introduction.

The initial investigation of David Hale and Capital Management Services ("CMS") revealed that in 1988 and 1989, Hale had conspired with two other Little Rock attorneys -- Charles Matthews and Eugene Fitzhugh -- to defraud the Small Business Administration ("SBA"). Essentially, the scheme involved shifting money in and out of CMS to make it appear that it had more paid-in capital than it actually had, and thus was eligible for more SBA funding. One means by which this was accomplished was the transfer of client funds from accounts at Prudential-Bache Securities, Inc., where Matthews worked as a broker, to CMS either directly or indirectly. For example, on November 3, 1988, several hundred thousand dollars was transferred from accounts at Prudential-Bache and used to make CMS loans look current and to make CMS appear as if it had more paid-in capital than it actually did. Shortly thereafter, the funds were returned to CMS. Hale falsely represented to the SBA that he had received $400,000 in payments on loans. In reliance on this false representation, the SBA provided CMS with $900,000 in funding to which it was not entitled.

B. United States v. David L. Hale, Charles Matthews, and Eugene Fitzhugh.[1]

1. Indictment and Superseding Indictment.

On September 23, 1993, a grand jury in Little Rock returned an indictment against David Hale, Charles Matthews, and Eugene Fitzhugh.[2] Count I charged all three defendants with conspiracy to defraud the United States, in violation of 18 U.S.C. § 371, regarding their

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[1] United States v. David L. Hale et al., No. LR-CR-93-147 (E.D. Ark. 1993).

[2] Id.

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involvement in the transfer of funds to CMS for the purpose of defrauding the United States. Count II charged Hale with making a false statement to the SBA regarding the $400,000 deposit, in violation of 15 U.S.C. § 645(a). Count III charged Hale and Matthews with the felony offense of conspiracy to defraud the United States, in violation of 18 U.S.C. § 371, regarding a separate $275,000 transaction. And Count IV charged Hale with making a false statement to the SBA regarding this transaction, in violation of 15 U.S.C. § 645(a).

On February 17, 1994, after Independent Counsel Fiske assumed responsibility for the prosecution, a Little Rock grand jury returned a superseding indictment against all three defendants charging four counts: Count I charged all three defendants with conspiracy to defraud the United States, in violation of 18 U.S.C. § 371; this count alleged numerous fraudulent acts by the defendants regarding a variety of transactions. Counts II and III charged Hale with making false statements to the SBA in violation of 15 U.S.C. § 645(a). Count IV charged Hale with making a fraudulent statement to the SBA in violation of 18 U.S.C. § 1001.

2. Hale's Guilty Plea and Cooperation Agreement.

This case was set for trial on March 28, 1994, before Stephen M. Reasoner, Chief Judge of the United States District Court for the Eastern District of Arkansas. Shortly before trial, on March 22, 1994, Hale entered into a plea and cooperation agreement with Independent Counsel Fiske. In a hearing before Chief Judge Reasoner, Hale waived his right to indictment, and the government filed a two count criminal information against him, charging felony violations of 18 U.S.C. § 371 (conspiracy) and 18 U.S.C. §§ 1341 & 2 (mail fraud). Hale pleaded guilty to these charges on that day.

Hale was sentenced on March 25, 1996, by Chief Judge Reasoner to twenty-eight months imprisonment, three years supervised release, and a $10,000 fine, and was ordered to pay

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restitution of $2,040,000 to the SBA. Hale testified at the trial of the McDougals and Tucker in April 1996. The Independent Counsel determined that Hale had provided the government with substantial assistance and moved for a reduction in his sentence under Fed. R. Crim. P. 35. On February 6, 1998, Judge Reasoner reduced Hale's sentence to time served (approximately nineteen-and-a-half months) and abated his fine.

3. Matthews and Fitzhugh Pleaded Guilty.

The trial of Matthews and Fitzhugh began before Chief Judge Reasoner on June 20, 1994. Shortly after the trial began, on June 23, 1994, both defendants pleaded guilty to misdemeanor charges, and the felony charges against them were dismissed. The government's superseding criminal information against Matthews charged him with two misdemeanor offenses of bribing a Small Business Investment Company ("SBIC") officer (Hale) in violation of 18 U.S.C. § 215. The criminal information against Fitzhugh charged him with one misdemeanor offense of bribing Hale in violation of 18 U.S.C. § 215. On January 3, 1995, Chief Judge Reasoner sentenced Matthews to sixteen months imprisonment followed by one year of supervised release.

Fitzhugh was also scheduled to be sentenced on January 3, but Chief Judge Reasoner deferred Fitzhugh's sentencing pending a report on his heart condition. The hearing was rescheduled to April 13, 1995. Shortly before the rescheduled hearing -- some nine months after he pleaded guilty -- Fitzhugh filed a motion to withdraw his guilty plea, asserting that his heart condition had caused him to be incompetent at the time of his plea. Chief Judge Reasoner denied Fitzhugh's motion, concluding that this was a "classic case of post plea regret."[3] Chief Judge Reasoner also concluded that Fitzhugh's alleged memory loss was not credible. Chief Judge Reasoner sentenced Fitzhugh to one-year term of imprisonment followed by one year of

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[3] United States v. Fitzhugh, 78 F.3d at 1328 (quoting Reasoner, C.J.).

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supervised release.

Fitzhugh appealed his guilty plea and sentence. On March 15, 1996, the United States Court of Appeals upheld Chief Judge Reasoner's denial of Fitzhugh's motion to withdraw his guilty plea, and rejected Fitzhugh's other arguments attacking his plea, including his claim that Independent Counsel Fiske lacked authority to prosecute him. Nevertheless, the Court vacated Fitzhugh's sentence, concluding that Chief Judge Reasoner had used an incorrect basis for determining the appropriate amount of loss from Fitzhugh's crime. After the Court of Appeals denied Fitzhugh's petition for a rehearing en banc, he petitioned for a writ of certiorari. On October 7, 1996, the Supreme Court denied certiorari.[4]

On October 22, 1996, Chief Judge Reasoner resentenced Fitzhugh to ten months in custody. Fitzhugh appealed this sentence, which the court of appeals affirmed on May 7, 1997. Fitzhugh petitioned the court of appeals for rehearing en banc, which the Court denied, and then filed a motion for reconsideration of his sentence in the district court. Chief Judge Reasoner denied that motion on July 14, 1997, and ordered Fitzhugh to report to a Bureau of Prisons facility by September 15, 1997. Fitzhugh appealed the denial of his motion for reconsideration, and the Court of Appeals affirmed Judge Reasoner's order. On February 20, 1998, the district court stayed Fitzhugh's reporting date pending further consideration of Fitzhugh's health. On December 15, 1999, Judge Reasoner adhered to the ten-month sentence, but recommended that Fitzhugh be permitted to serve the first five months in a halfway house or medical facility and the final five months on home detention,[5] which the Independent Counsel did not oppose.[6]

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[4] Fitzhugh v. United States, 519 U.S. 902 (1996).

[5] Whitewater Defendant To Avoid Going to Prison, A.P., Dec. 16, 1999.

[6] Id.

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II. PROSECUTION OF CHRISTOPHER WADE FOR BANKRUPTCY FRAUD.

A. Introduction.

Christopher V. Wade was a Whitewater Development real estate salesperson, and was also a business partner of James McDougal. During the course of his investigation, Independent Counsel Fiske discovered that Wade had purchased Lot 7 at Whitewater Development in the name of an acquaintance, who thereafter applied for a bank loan, pledging this property as security, without disclosing that Wade was the real owner. This was done while Wade's personal bankruptcy action was pending. This raised questions of whether Wade or others had committed the federal offenses of bank fraud, bankruptcy fraud, or tax fraud.

After Judge Starr replaced Mr. Fiske as Independent Counsel, Judge Starr sought and received specific referrals from the Special Division covering this matter. By orders dated December 19, 1994, and July 28, 1995, the Special Division referred to the Independent Counsel whether Wade had committed fraud regarding certain bank loans, had committed any federal crimes in regard to the bankruptcy he and his wife filed in 1989, or had filed fraudulent tax returns.[7]

The Independent Counsel investigation showed that on November 1, 1989, Wade and his wife filed a bankruptcy petition under Chapter 11 of the Bankruptcy Code,[8] which is a petition for reorganization. Wade had verified under penalty of perjury that he had outstanding debts to

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[7] Order, In re: Madison Guaranty Sav. & Loan Ass'n, (D.C. Cir. [Spec. Div.] Dec. 19, 1994); Order, In re: Madison Guaranty Sav. & Loan Ass'n, (D.C. Cir. [Spec. Div.] July 28, 1995).

[8] Hearings Relating to the Investigation of Whitewater Dev. Corp. and Related Matters Before the Senate Special Comm. to Investigate Whitewater Dev. Corp. and Related Matters of the Senate Comm. on Banking, Housing, and Urban Affairs, 104th Cong. 150-51 (May 8, 1996) (testimony of J. Patterson).

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unsecured creditors of just over $489,000 and had assets of just over $371,000.[9] These statements were false in that Wade had concealed approximately $100,000 of assets by placing them in the name of other persons.

The Independent Counsel's investigation also showed that while Wade's bankruptcy was pending, he purchased Lot 7 in Whitewater Estates from a person who then resided in Texas.[10] Wade purchased Lot 7 by transferring to the owner 120 acres of property that Wade owned in northern Arkansas.[11] Wade concealed his participation in the transaction by having title to Lot 7 placed in another person's name.[12] In June 1991, Wade caused this other person to apply for a $45,000 loan from Citizens Bank of Lavaca.[13] The loan application was fraudulent because although the application asserted the loan was for the benefit of Wade's surrogate, both he and Wade intended this loan to benefit Wade, and Wade in fact used it to build his home on Lot 7.[14] Wade appraised the Lot 7 property in connection with this loan, and misrepresented in his appraisal that he had no interest in the property. Based on these false representations, the bank lent Wade's surrogate $45,000. In September 1991, Wade again caused the other person to obtain a loan from the Lavaca Bank by falsely concealing Wade's connection to it.[15] This second

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[9] Petition, In re: Christopher V. Wade and Rosalee Wade, (United States v. Wade), No. 89-13144 (E.D. Ark. Nov. 14, 1990).

[10] Wade 4/7/94 Int. at 6.

[11] Id.

[12] Id. at 7.

[13] Id. at 7-8.

[14] Id.

[15] Lauramoore 3/1/94 Int. at 3.

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loan was for $15,015, and Wade used it in constructing his house.[16]

B. United States v. Wade.[17]

On March 7, 1995, Wade agreed to plead guilty to two felony counts and to cooperate with the Independent Counsel's investigation. On March 21, 1995, in a hearing before Judge Susan Webber Wright, Wade waived his right to indictment, and the government filed a two count criminal information against him.[18] The information charged one felony violation of 18 U.S.C. § 152 (bankruptcy fraud) in relation to Wade's having concealed assets in his bankruptcy case, and one felony violation of 18 U.S.C. § 1014 (false loan application), in relation to his fraudulently obtaining the two loans to construct his home.[19] Wade pleaded guilty to these two charges that day, and in doing so admitted that his false and misleading statements had been knowingly made with the intent to deceive.[20] On December 1, 1995, Judge Wright sentenced Wade to 15 months imprisonment followed by three years supervised release, and a $3,000 fine.[21]

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[16] Id.

[17] United States v. Christopher V. Wade, LR-CR-95-48 (E.D. Ark. 1995).

[18] Waiver of Indictment, United States v. Christopher V. Wade, No. LR-CR-95-48 (E.D. Ark. Mar. 21, 1995); Information, United States v. Christopher V. Wade, No. LR-CR-95-48 (E.D. Ark. Mar. 21, 1995).

[19] Information, United States v. Christopher V. Wade, No. LR-CR-95-48 (E.D. Ark. Mar. 21, 1995).

[20] Plea Agreement, United States v. Christopher V. Wade, No. LR-CR-95-48 (E.D. Ark. Mar. 21, 1995).

[21] Judgment, United States v. Christopher V. Wade, No. LR-CR-95-48 (E.D. Ark. Dec. 4, 1995).

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III. PROSECUTION OF FRAUDULENT SCHEME CONCERNING $825,000 MADISON GUARANTY LOAN AND RELATED CMS LOANS.

Regulatory Independent Counsel Robert B. Fiske Jr. extensively investigated a series of related transactions involving fraudulent loans from Madison Guaranty and David Hale's CMS. The centerpiece of this scheme involved an $825,000 loan from Madison Guaranty to a nominee of David Hale. Hale used the "profits" of this transaction to infuse $500,000 in capital into CMS. Hale caused CMS to make four fraudulent loans to designees of Jim McDougal and Jim Guy Tucker. This section details this fraudulent scheme and the numerous prosecutions that this Office brought against the various participants.

A. Factual Overview of the Fraudulent Scheme.

1. Introduction.

Beginning in the fall of 1985 and into the spring of 1986, Jim McDougal, David Hale, and Jim Guy Tucker planned and executed an illegal scheme involving Madison Guaranty, CMS, and other entities and people. The scheme cost Madison Guaranty more than $1.8 million and cost CMS more than $500,000 -- costs ultimately shouldered by the federal taxpayers. The scheme grew in part out of the McDougals' need for funding to take care of various financial pressures they were then facing. Jim McDougal told Hale he needed a loan from CMS to "clean up some things" for himself and Madison Guaranty, as well as for "the political family."

Hale said he met with McDougal and Tucker in the fall of 1985 to discuss a possible loan for McDougal. Hale's CMS, a federally insured Small Business Investment Corporation ("SBIC"), was limited to $150,000 in lending per individual, and had capital between $700,000 and $800,000 available for lending, which McDougal concluded was insufficient for his purposes. He proposed they provide additional money for CMS, which was an attractive prospect because the capital would be matched by the Small Business Administration ("SBA")

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up to three dollars for one.

According to Hale, to increase CMS 's capital, it was agreed that Madison Guaranty would finance the purchase of property in which Hale had an interest. The property was to be bought by a nominee at an inflated price, thus netting a large "profit" for Hale who, in turn, would put his "profit" into CMS, which, multiplied by the SBA's additional funding, would increase Hale's ability to lend to others. The loans by CMS would be structured so that McDougal's and Tucker's roles were hidden.

Madison Guaranty could not lend CMS money directly because borrowed funds would not be recognized by the SBA as an increase in capital. It was agreed Hale would sell the properties to a third party, with Madison Guaranty providing the financing. Hale approached Dean Paul, a business associate, to act as the straw purchaser for the properties. Dean Paul agreed that his company, Dean Paul Ltd., would purchase, in name only, three properties in which Hale had an interest, and he agreed to sign for the loan in exchange for certain financial incentives. McDougal arranged for Madison Guaranty to loan Paul $825,000 to finance the purchase. To justify a loan that large, Hale, with William Watt's help, secured fraudulent appraisals that greatly overvalued the properties by Robert Palmer, a Little Rock appraiser. With the payment from Paul for the over-valued properties, the real estate transactions netted Hale approximately $500,000 in "profits," which Hale put into CMS. This money let CMS get an additional $1.5 million in funding from the SBA, and raised CMS's per-individual loan limit from $150,000 to $300,000.

For its part in the scheme, Hale's CMS loaned funds to McDougal designees. There were four such loans, all of which were fraudulent because the true nature of the transactions and the people benefited were purposefully concealed. The four such loans were:

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1) $149,000 to Larry E. Kuca, McDougal's business partner;

2) $65,000 to Stephen A. Smith, Tucker and McDougal's business partner;

3) $150,000 to an entity controlled by Tucker for the purchase of the Castle Grande sewer and water system; and

4) $300,000 to Susan McDougal, doing business as "Master Marketing," a fictitious advertising business.

None of the loans were used for the purposes stated in the application documents. Tucker used the loan for Castle Sewer & Water to make a down payment on the system previously purchased by Madison Guaranty and its straw purchaser Seth Ward -- thereby benefiting Madison Guaranty and Jim McDougal. Similarly, part of the loan to Mrs. McDougal was used to fund Whitewater Development's down payment on another piece of property, and to help retire a Whitewater debt, conferring a benefit on the Whitewater Development, jointly owned by the McDougals and the Clintons.

Several of the events surrounding these illegal transactions took place on or near February 28, 1986, the "as of date" for the imminent FHLBB exam of Madison Guaranty. By concluding the transactions before the "as of" date, Madison Guaranty's books and records would show better financial health and net worth to the regulators than was actually the case. The events regarding that federal examination are discussed in Chapter 1 of Part B of this Report.

After his convictions in 1996 and his guilty plea in 1998, Jim Guy Tucker testified before the grand jury regarding the meetings between Tucker, McDougal, and Hale that Hale had described. Tucker asserted that Hale's testimony had been false and that the meetings described by Hale never occurred.[22] Tucker did admit, however, to having had a meeting with Hale and

[22] Tucker 4/21/98 GJ at 110.

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McDougal at which the sale of Etta's Place was discussed.[23] As will be discussed in the sections that follow, Etta's Place was one of the properties involved in the fraudulent scheme.

2. The $825,000 Dean Paul Nominee Loan.

Madison Guaranty's $825,000 loan to Dean Paul Ltd. Inc., was the focal point of the scheme. The stated purpose of the loan was to finance Paul's purchase of three properties in which David Hale had an ownership interest. The loan closed on February 28, 1986. Paul's "purchase" netted Hale a profit of $502,000, which he used to put money into his SBIC.

David Hale brought Dean Paul into the transaction as the straw purchaser.[24] Hale first approached Dean Paul about the $825,000 transaction in December 1985.[25] Hale told Paul the objective of the transaction was to help McDougal and others by putting capital into Hale's SBIC.[26] Paul said Hale told him that McDougal was in trouble, and with the examiners coming to Madison Guaranty, he needed to be "cleaned up."[27] They had an understanding that Paul would not make any payments on the $825,000 loan.[28] Hale assured Paul that Hale and Tucker were working on a few deals, and the $825,000 loan would be paid back from those

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[23] Id.

[24] Paul held a variety of jobs through the 1960s and early 1970s, mostly involving buying and selling. In the late 1970s, Paul made a significant amount of money buying and selling coal in Oklahoma and other western states.

[25] Tr. at 3133-34, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark.) (testimony of Hale).

[26] Id.

[27] Id. at 1914-15 (testimony of Paul).

[28] Id. at 1918.

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transactions.[29]

Three properties were sold to Dean Paul Ltd. as part of the $825,000 transaction -- two in Sherwood, Arkansas, and one on Woodson Lateral Road. One Sherwood property was called "Etta's Place," after a restaurant with that name located on the property.[30] The other Sherwood property was located not far from Etta's Place.[31] In preparing to sell the three properties, Hale first acquired the remaining half interest in Etta's Place that he did not own.[32]

Hale took several steps to prepare the three properties so that, at least on paper, they could support the amount of the loan to Dean Paul.[33] Most importantly, Hale brought William Watt into the deal as the attorney handling the sale of the properties.[34] When Hale told Watt what appraised value he needed on the three properties,[35] Watt said the land could not net that amount, but that he would retain Robert Palmer to do the appraisals.[36] Watt contacted Palmer about the appraisals, and told him he needed the appraisals quickly.[37] Watt told Palmer that he needed them for a restaurant located on Warden Road -- Etta's Place -- and a vacant piece of

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[29] Id. at 1918-19, 1922.

[30] Id. at 3099 (testimony of Hale).

[31] Id.

[32] Id. at 3912-14.

[33] Id. at 3135-37.

[34] Id.

[35] Id. at 3138-39.

[36] Id.

[37] Id. at 2171-72 (testimony of Palmer).

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property down the street from the restaurant.[38] Palmer said Watt told him that he needed a certain value on the appraisal -- somewhere in the $750,000 range.[39] Palmer concluded the property was not worth more than $300,000 to $400,000.[40] When he told Watt this, Watt told Palmer to come to his office.[41] Palmer told Watt that to reach the value he wanted, the appraisal would have to be inflated, and Watt told him that Jim McDougal had approved the deal and Palmer was to do what had to be done, that the deal went all the way to the top.[42] Palmer asked him if he meant Jim McDougal, and Watt said "higher."[43] When Palmer asked Watt if he meant "politically," Watt replied affirmatively.[44]

The third property involved in the Dean Paul transaction was 240 acres located on Woodson Lateral Road.[45] Two appraisals existed for this property: an accurate one, dated January 14, 1986, valuing the property at $275,000, and an inflated appraisal, dated February 10, 1986, valued at $720,000.[46] Palmer said Watt initially told him the appraisal for Woodson Lateral was a "straight deal" to be appraised properly.[47] Palmer appraised the property at a value

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38 Id. at 2173.

39 Id. at 2173-74.

40 Id. at 2177.

41 Id. at 2177-78.

42 Id. at 2178-79.

43 Id. at 2179.

44 Id.

45 See id. at 2189.

46 Id. at 2188, 2191.

47 Id. at 2187.

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of $275,000,[48] and gave Watt that appraisal dated January 14, 1986.[49] Palmer said Watt subsequently told him a higher value was needed on the appraisal.[50] Palmer said Watt told him the same people involved in the Etta's Place deal were involved in this one, and they needed a higher amount.[51] Palmer's second appraisal, dated February 10, 1986, valued the property at $720,000.[52]

The $825,000 loan was considered and approved by the Madison Guaranty loan committee on February 20, 1986.[53] Don Denton remembered Jim McDougal pressing for the loan; Denton said he would not have made the loan had Jim McDougal not told him to do so.[54] On February 28, 1986, Paul signed all of the documents for the $825,000 loan without reviewing them.[55] Paul then went to Standard Abstract and Title to complete closing documents.[56] The proceeds of the Dean Paul loan were distributed to David Hale in three checks cut by Standard Abstract and Title company that same day.[57] Of the $825,000 loan, approximately $313,000

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[48] Id. at 2188-89.

[49] Id.

[50] Id. at 2190-91.

[51] Id. at 2190.

[52] Id. at 2191.

[53] See id. at 1109-11 (testimony of Denton).

[54] Id. at 1144-45, 1152.

[55] Id. at 1926, 1928 (testimony of Paul).

[56] Id. at 1927-28.

[57] Id. at 3291-93 (testimony of Hale); Check No. 44852 from the account of Standard Abstract & Title Company, signature illegible, payable to David Hale for $200,000 (Feb. 28,

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retired a mortgage on Etta's Place and paid for closing costs. Hale received the remainder. Specifically, on March 3, 1986, Hale received the proceeds of a check for $200,000 and William Watt, as trustee for Etta's Place, received proceeds of $302,000. Hale used the $502,000 to purchase a certificate of deposit at the People's Bank in Russellville, which Hale acquired in CMS's name.[58]

Hale then requested additional funding from the SBA; he ultimately obtained $1.5 million in additional SBA funds.[59] On about April 1, 1986, the SBA notified Hale the $500,000 was recognized, and, consequently, the SBA would contribute additional money.[60] CMS's lending limit to any one borrower also increased from $150,000 to $300,000.[61] On April 2, 1986, Hale redeemed the certificate of deposit, deposited $400,000 into CMS 's account at Pulaski Bank, and rolled over the remaining $102,000 into another certificate of deposit.[62]

3. James McDougal, CMS, and Larry Kuca.

One nominee McDougal sought a loan for was Larry Kuca, who McDougal knew from their joint participation in a real estate development known as Campobello Development. They

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1986) (Doc. Nos. 247-0000007-08); Check No. 44853 from the account of Standard Abstract & Title Company, signature illegible, payable to Dean Paul Ltd. Inc., for $1,066.15 (Feb. 28, 1986) (Doc. No. 247-00000009-10); Check No. 44851 from the account of Standard Abstract & Title Company signature illegible payable to William W. Watt, Trustee, for $302,000 (Feb. 28, 1986) (Doc. No. 247-000000011-12).

[58] Tr. at 3959-60, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark.) (testimony of Hale).

[59] Id. at 3293, 3714-15, 3847.

[60] Id. at 3300.

[61] Id. at 3294.

[62] Id. at 3959.

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were also partners in a joint venture known as KUMAC (for KUca and MACdougal).

In the fall of 1983, Jim McDougal through Madison Financial formed a limited partnership with Chris Wade called Campobello Development Company[63] to purchase approximately 3,900 acres of land on Campobello Island in New Brunswick, Canada.[64] The property was purchased for, coincidentally, $825,000.[65] Madison Guaranty financed the entire purchase price.[66] McDougal soon found four individual investors for the Campobello project, who formed a partnership called Head Harbor, which became equal partners with Campobello Development in a partnership called Campobello Properties Venture ("Campobello Properties"). Kuca started at Campobello in the spring of 1985, implementing a sales program that became quite successful.[67]

To finance the purchase of additional property adjacent to Campobello, known as "Seaview," on November 19, 1985, Kuca obtained $150,000 from Campobello Properties as an "advance on commissions."[68] Kuca used the "advance" to purchase the Seaview property in his own name. Jim McDougal remained a silent partner in the purchase. Kuca understood that he would have to repay the advance on commission, although he did not himself have the cash to do

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[63] J. McDougal 8/1/96-6/9/97 Int. at 92. Wade was the principal person marketing the Whitewater Development lots at his office in Flippin, Arkansas.

[64] J. McDougal 8/1/96-6/9/97 Int. at 92.

[65] Wade 7/25/95 Int. at 6.

[66] Id.

[67] Tr. at 4644-45, 4648, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark.) (testimony of Kuca).

[68] Tr. at 4652-54, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark.) (testimony of Kuca).

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Some time before January 10, 1986, McDougal introduced Hale to Larry Kuca.[69] Kuca and Hale discussed a loan for Kuca's business, which he called Campobello Realty, a real estate brokerage that sold lots for Campobello Properties.[70] At their first meeting, Kuca, Hale, and McDougal agreed that CMS would make a loan to Kuca d/b/a Campobello Realty, and Kuca would use the loan proceeds to reimburse Campobello Properties for the advance on commissions.[71]

On January 10, 1986, Kuca submitted a false loan proposal to CMS with an attached December 30, 1985 financial statement from Larry Kuca d/b/a Campobello Realty.[72] The loan proposal described in general terms the bright economic future of Campobello Realty, but did not refer to the purchase of the Seaview property by McDougal and Kuca.[73] The application did not show that the loan would reimburse Campobello Properties for the advance on commissions it gave to Kuca.[74] Instead, Kuca stated in the application:

> I have invested my previous earnings in real estate. I am requesting this loan for operating capital to carry on my brokerage business. Funds are needed for travel, equipment, advertising and general administration. I have attached my resume, financial statement and brochure of Campobello Island.[75]

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[69] Id. at 4654-55.

[70] Id. at 4655-57.

[71] See id. at 4655-56.

[72] See id. at 4657-58.

[73] Letter from Larry E. Kuca to David Hale (undated) (Doc. No. 0000275-276); Tr. at 4657-58, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark.) (testimony of Kuca).

[74] Id. at 4657-58 (testimony of Kuca).

[75] Id. at 4658.

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On January 10, 1986, Kuca and McDougal went to Hale's office to close the loan.[76] Kuca received a check for $143,000 made payable to Larry E. Kuca d/b/a Campobello Realty Company.[77] The $143,000 was deposited into a Campobello Properties account that day.[78]

4. The Fraudulent CMS Loan to Steve Smith.

Hale made the second of the four subject CMS loans to Stephen Smith d/b/a The Communication Company, on February 21, 1986. Smith was a partner with McDougal in Madison Bank and Trust and later a partner with McDougal and Tucker in a land development that was financed by the Worthen Bank.

In 1981, Steve Smith invested in a partnership called the Kings River Land Company ("Kings River").[79] In addition to Smith, the Kings River partnership consisted of his father (Austin Smith), Jim Guy Tucker, and Jim McDougal.[80] In 1981, Kings River purchased thirty-five acres of land in Madison County, Arkansas, near Huntsville.[81]

Kings River obtained a $165,000 loan from Worthen Bank and Trust in Little Rock, Arkansas, to fund the purchase of the land.[82] In 1984, Kings River refinanced the loan for

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[76] Id. at 4659.

[77] Id. at 4658-59, 4661.

[78] Id. at 4661. Kuca received the remaining loan proceeds, a $6,000 check from CMS, on July 22, 1986. None of those proceeds were spent as described in the loan application.

[79] Tr. at 4810, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark.) (testimony of Stephen A. Smith).

[80] Id. at 4809-10.

[81] Id. at 4812.

[82] Id.

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$115,000.[83] Steve Smith had no involvement in the refinancing of the Kings River note with Worthen Bank, other than signing the appropriate papers.[84]

In January 1985, Tucker and McDougal negotiated for the renewal of the Kings River note at Worthen Bank.[85] To renew the note, Worthen Bank insisted on receiving the personal guarantees of each of the four Kings River partners.[86] The partners agreed, and the note was renewed for a principal value of $115,000 in January 1985.[87] In late 1985, Worthen said it might not be possible for Kings River to renew the note, which now had an unpaid principal of about $55,000.[88] The Kings River partners did not have the cash to retire the note or any immediate prospect of selling the remaining real estate that secured the note.

McDougal spoke with Worthen Bank about extending the due date, and Worthen Bank sent McDougal a letter, dated January 28, 1986, extending the Kings River note until February 10, 1986.[89] McDougal then told Smith that David Hale's CMS would make a loan to retire the Worthen note.[90]

In early 1986, Smith spoke with McDougal about the Kings River note. That is when McDougal told Smith that Worthen refused to renew the loan, but that instead, CMS would loan

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[83] Id. at 4813-15.

[84] Id. at 4815-16.

[85] Id. at 4814-15.

[86] Id. at 4814-16.

[87] Id. at 4815-16.

[88] Id. at 4817.

[89] Id. at 4769-70 (testimony of Burnett).

[90] Id. at 4817-19 (testimony of Stephen A. Smith).

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Kings River the amount to pay off the Worthen loan.[91] Smith later said McDougal told him CMS would not issue a real estate loan to Kings River directly, but instead would loan money to Smith's company -- The Communication Company.[92] Smith agreed that he would draft and submit a loan application to CMS requesting financing for The Communication Company.[93] McDougal then told Smith to prepare a loan proposal, and how to structure a proposal and a funding request.[94]

Smith submitted the proposal to David Hale in February 1986; the application requested a $65,000 loan. Smith later said when he had filled out the application, he had only requested $55,000. He did not know who had increased the amount to $65,000.[95] The proposal described The Communication Company as being a public relations and advertising firm that needed immediate funds.[96] It stated falsely:

> The specific purpose of the loan proceeds is to employ a full time account executive and marketing representative to solicit, acquire, and service new accounts and to cover associated operating expenses for one year. This expansion in personnel is essential at this time if The Communication Company is to continue its account and billing growth beyond the present level of operation.[97]

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[91] Id.

[92] Id. at 4818.

[93] Id.

[94] Id. at 4818-19.

[95] Id. at 4819-21.

[96] Loan Proposal prepared by The Communication Company (Doc. No. G-00001247).

[97] Id. When Smith submitted his loan proposal and financial statement for The Communication Company, he had no intention of using the funds for the stated purpose. See Tr. at 4807, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark.) (testimony of Stephen A. Smith) (discussing guilty plea).

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On February 21, 1986, Smith and McDougal went to Hale's office to close the loan.[98] Smith signed the paper work, and received a check for $65,000 payable to Steve Smith d/b/a The Communication Company.[99] McDougal and Smith left Hale's office with the $65,000 check, went directly to Madison Guaranty, and used the $65,000 loan proceeds to purchase a $65,000 cashier's check payable to Worthen Bank.[100] The cashier's check was delivered to Worthen Bank with a handwritten note from Steve Smith:

> Enclosed is my check for $65,000 to cover the principal and interest on the Kings River Land Company note, No. 8102962. I'm not sure the exact interest to date, but I'll trust you to figure if I still owe you or you me. Also, please execute the necessary release deed for the mortgage.[101]

The $65,000 check was more than sufficient to cover the outstanding balance for the Kings River note.[102] On February 25, 1986, Worthen Bank sent McDougal a check for $1,611.28 with an attached note that said:

> Enclosed are documents relating to the [Kings River] loan, including the paid note, mortgage release, and cashier's check for overpayment of $1,611.28. Upon filing the mortgage release with the Circuit Clerk of Madison County, our lien will be removed.[103]

After receiving the check for $1,611.28 from Worthen Bank, Jim McDougal deposited the

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[98] Tr. at 4831, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark.) (testimony of Stephen A. Smith).

[99] Id. at 4833-34, 4836.

[100] Id. at 4838.

[101] Handwritten Note from Stephen A. Smith (Doc. No. 144-00014630).

[102] Tr. at 4772, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark.) (testimony of Burnett).

[103] Letter from Robert Burnett to James B. McDougal (Feb. 25, 1986) (Doc. No. 22-00000138); Tr. at 4772-74, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark.) (testimony of Burnett).

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money into James and Susan McDougal's account at Madison Guaranty.[104]

Steve Smith did not think any payments were due on the CMS loan until February 1987,[105] but in the summer of 1986, Tucker sent each of the Kings River partners a memorandum dated August 20, 1986, describing the monthly payments due on the CMS loan and the amount then in arrears.[106] Tucker's memorandum proposed that each partner pay his pro-rata share (25%) of the amount due on the CMS loan; that was $2,590.80 each for the amount past due, and then 431.80 each monthly.[107]

On January 9, 1988, shortly after Jim Guy Tucker had sold a Florida cable television system for approximately $11.75 million,[108] Tucker delivered a check to David Hale.[109] The check, drawn on Jim Guy and Betty Tucker's bank account at First Commercial Bank, was made payable to CMS for $16,351.44,[110] with the "memo" section of the check, reading "Repay 1/4 of

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[104] See Bank Statement for the account of Susan H. McDougal and James McDougal (Feb. 28, 1986) (Doc. No. 174-00000951).

[105] Tr. at 4841-42, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark.) (testimony of Stephen A. Smith).

[106] Id. at 4841-45; Memorandum from Jim Guy Tucker to Steve Smith, Austin Smith, and Jim McDougal (Aug. 20, 1986).

[107] Tr. at 4841-45, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark.) (testimony of Stephen A. Smith). Smith was able to make the initial payment of $2,590.80, and one or two monthly payments. Id. at 4844. Smith's parents made payments on the obligation to CMS. Id. at 3209 (testimony of Hale).

[108] Tucker and his partner William J. Marks pled guilty to a conspiracy to impede the Internal Revenue Service with this cable venture.

[109] Tr. at 3204, 3212-13, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark.) (testimony of Hale).

[110] Id. at 3204, 3212.

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Smith Comm. loan for Kings River includes 569.40."[111] Hale said when Tucker delivered his signed check, he asked Hale if Smith and McDougal had paid him on The Communication Company loan from the sale of approximately five to ten acres of land in Madison County.[112] Hale replied they had not.[113] Tucker became angry and said they had promised to pay back the loan with proceeds of the sale.[114]

5. The Fraudulent CMS Loan to Castle Sewer & Water.

The third CMS designated loan related to the $825,000 loan scheme was a $150,000 loan to Castle Sewer & Water on February 28, 1986. When the loan was made, Tucker was listed as owning two-thirds of the Castle Sewer and Water stock, and R. D. Randolph owned the remaining one-third. This loan is discussed in more detail in Chapter 1 of Part B of this Report.

On February 14, 1986, Jim Guy Tucker sent Hale a "loan request" ostensibly for his "client," Castle Sewer and Water.[115] The loan application to CMS requested a $150,000 loan, and "$300,000 if lender is able to do so."[116] The application said: "[l]oan proceeds will be used for initial operating capital and for maintenance and painting of the storage tank."[117] The SBA

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[111] Id. at 3212-13. Tucker signed the check. Check No. 1040 from the account of Jim Guy Tucker or Betty Tucker signed by Jim Guy Tucker payable to CMS, Inc., for $16,351.44 (Jan. 9, 1988) (Doc. No. 083-00021073).

[112] Tr. at 3213, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark.) (testimony of Hale).

[113] Id. at 3213.

[114] Id.

[115] Id. at 3236, 3239.

[116] Id. at 3241.

[117] Id. at 3242-43.

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Portfolio Financing Report (Form 1031), which Hale forwarded to the SBA, listed the use of the proceeds as "working capital." Tucker did not sign this Financing Report.[118]

Randolph signed a personal guaranty on the $150,000 loan,[119] later testifying that he "didn't realize at the time that all the paper signing was going on that [he] was personally guaranteeing [the loan]."[120] Tucker did not guarantee the loan.[121]

On February 28, 1986, CMS gave Jim Guy Tucker the check made out to Castle Sewer and Water for $150,000.[122] The check was endorsed by Jim Guy Tucker.[123] Tucker used the $150,000 proceeds as a down payment on a $1,200,000 purchase of the sewer and water system from Madison Financial.[124] Castle Sewer and Water gave a $1,050,000 promissory note to Madison Financial to cover the remainder of the purchase;[125] Madison Financial assigned the note to Madison Guaranty the same day.

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[118] Id. at 3261-63.

[119] Id. at 3237.

[120] R.D. Randolph 5/10/95 GJ at 84.

[121] See Tr. at 3237, 3260, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark.) (testimony of Hale).

[122] Id. at 3263-64.

[123] Id. at 3264.

[124] Id. at 4002-03.

[125] Id. at 1307 (testimony of Denton).

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6. The Fraudulent $300,000 Loan to Susan McDougal.

The final CMS loan resulting from the fraudulent scheme was a $300,000 loan to Susan McDougal, d/b/a Master Marketing, made on April 3, 1986.[126] Hale could not make this loan until after he received the $502,000 in net proceeds from Madison Guaranty's loan to Dean Paul and his loan limit was raised.[127]

a. The Loan.

On April 3, 1986, Susan McDougal came to Hale's office to sign the loan document and to receive the $300,000 check.[128] Before that date Hale had dealt with Jim McDougal about the loan, not Susan McDougal. She executed the relevant loan documents, including a guaranty.[129] Similar to the other loans, Susan McDougal left Hale's office with a check made payable to Susan McDougal d/b/a Master Marketing for $300,000.[130] On April 8, 1986, the Master Marketing loan check was deposited into the Madison Guaranty account for James and Susan McDougal.[131] It was never endorsed but instead was stamped with a guaranteed endorsement

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[126] Id. at 3305, 3310 (testimony of Hale).

[127] Id. at 3224.

[128] Id. at 3329.

[129] Id.; Guaranty signed by Susan McDougal (Apr. 3, 1986) (Doc. No. AAU-00000837); Hale 6/2/94 Int. at 4. Jim McDougal also signed a personal guaranty for the loan. Tr. at 3340, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark.) (testimony of Hale); Guaranty signed by James McDougal (Doc. No. AAS-00002862-2863).

[130] Tr. at 3342-43, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark.) (testimony of Hale). Before the issuance of the Master Marketing loan, Susan McDougal operated an advertising company -- Madison Marketing Company -- for several years. Madison Marketing was incorporated on July 16, 1985 and ceased operating as a corporation on January 22, 1986. Borod & Huggins, Madison Guaranty Savings & Loan Association Special Counsel Investigative Report at 108 (Mar. 3, 1987).

[131] Madison Guaranty Bank Statement for Jim and Susan McDougal (Apr. 30, 1986)

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stamp.[132]

Two separate Master Marketing loan application reports existed which purported to state the purpose of the $300,000 Master Marketing loan. The first proposal (identified below as the "original" Master Marketing report) described Master Marketing as "a general purpose advertising and public relations consulting firm with Susan McDougal, a well-known Little Rock advertising personality, as sole owner."[133] It said "This report is prepared for and provided to CMS Corporation for its exclusive internal use in evaluating a loan application by Master Marketing."[134] This report also said:

> To sustain and service current clients, add new account clients, and to expand client services, Master Marketing requests a loan of $300,000 for a period of not less than 5 years. Although some expenditures equal to about 20% of the loan request will be needed for office and technical equipment, the preponderance of funds are required for operating capital as the nature of applicant's business often requires advance payment for media time purchased thus creating heavy capital requirements to cover the cash flow demands arising from the delay between the time the firm pays for media buys and subsequent collection from the firm's clients.[135]

This original loan report was not found in CMS 's loan files or documents produced by David Hale. Rather, it was found on a computer diskette belonging to Sue Strayhorn, McDougal's secretary at Madison Guaranty.[136] Because of the disk's file name, Strayhorn

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(Doc. No. 56-00110465); Deposit Ticket (Apr. 7, 1986) (Doc. No. 054-01006138).

[132] Tr. at 3343, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark.) (testimony of Hale).

[133] Appendix A, Confidential Data Master Marketing at 1 (Doc. No. 174-00001173-136).

[134] Id.

[135] Id. (Doc. Nos. 174-00001173-136 through 174-00001173-137).

[136] Tr. at 580, 637-38, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark.) (testimony of Strayhorn).

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concluded that March 19, 1986, was the date she typed the original Master Marketing proposal.[137] Strayhorn typed this proposal at the direction of Jim McDougal.[138]

A second Master Marketing loan report (referred to below as the "second" report) was delivered to Hale by McDougal after the issuance of the loan.[139] The second report described Master Marketing as "a general purpose real estate brokerage and land development firm with Susan McDougal, a well-known Little Rock real estate executive as sole owner."[140] The second report listed the business address as 1308 Main Street in Little Rock,[141] and specified the following use for the proposed loan funds:

> A loan of $300,000 is requested -- approximately $107,000 of the proceeds will be used to complete Phase 2 of Flowerwood Farms II by the extension of water and sewer lines to 127 lots. It is anticipated the improved lots will sell over a three year period for $230,000. This underlying land in this project is free of debt.
>
> The remaining proceeds will be used to complete surveying and road building on approximately 700 acres 8 miles south of Little Rock within 1,300 feet of the Pine Bluff Freeway in an area where applicant has had a highly successful career selling tracts of land. Underlying debt of this property, which has water and sewer available, is approximately $500,000.[142]

The Independent Counsel concluded, from Strayhorn's computer disk analysis, that the

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[137] Id. at 637-38.

[138] McDougal 8/1/96-6/9/97 Int. at 50.

[139] Tr. at 3308, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark.) (testimony of Hale); Second Master Marketing Report (undated) (Doc. Nos. AAU-00000817 through 819).

[140] Second Master Marketing Report (undated) (Doc. Nos. AAU-00000817 through 819).

[141] Id. (Doc. No. AAU-00000817).

[142] Id. (Doc. Nos. AAU-00000817 through 819). Although the second report was also fraudulent, it was much closer to the truth in describing the actual use of part of the proceeds. See J. McDougal 8/1/96-6/9/97 Int. at 50.

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second report was typed on June 16, 1986,[143] long after the loan to Master Marketing was funded and at a time when the FHLBB examination of Madison Guaranty was ongoing and the McDougals' expulsion by the examiners was imminent. By the time the second report was drafted, the McDougals had already spent all of the McDougal-Master Marketing loan.

Hale said McDougal unexpectedly came to his office in late June or early July 1986. Hale said McDougal was frightened and he asked Hale to return to him the original Master Marketing report and substitute the second report; Hale did as McDougal requested,[144] and McDougal then took the original Master Marketing proposal with him, whereas Hale kept the second one.[145]

b. Actual Use of the Master Marketing Loan.

The $300,000 loan proceeds were deposited into Jim and Susan McDougal's personal account on April 8, 1986.[146] In less than seven weeks, the McDougals spent all of the Master Marketing loan.

The McDougals' use of the Master Marketing loan can be divided into six categories: bank and loan payments; payments to businesses and individuals; payments for the McDougals' home at #4 Bettswood in Little Rock; payments for political campaigns; professional fees; and miscellaneous expenses. The expenditures broke down approximately as follows:

Bank and Loan Payments $206,000

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[143] See Tr. at 645, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark.) (testimony of Strayhorn) (concluding June 16, 1986 was the correct date).

[144] Id. at 3308-09.

[145] J. McDougal 8/1/96-6/9/97 Int. at 50.

[146] See Madison Guaranty Bank Statement for the account of Jim and Susan McDougal (Apr. 30, 1996) (Doc. No. 056-00110465).

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Business and Individuals	33,000
#4 Bettswood	21,000
Political Campaigns	15,000
Professional fees	8,500
Miscellaneous	17,000[147]

c. Susan McDougal's Misrepresentations after the Loan.

Subsequent statements by Mrs. McDougal reflected her continuing effort to conceal the true nature of the Master Marketing loan and the purposes to which the loan was put. On April 3, 1987, Mrs. McDougal sent a letter to David Hale stating:

> Reference is made to the note payment I now have due at Capit[a]l Management Services, Inc. Because of the fluctuation between payment of media expenses and reimbursement, it will be 30 to 60 days before I can make this payment to you.[148]

The letter's reference to "the fluctuation between payment of media expenses and reimbursement" was consistent with the false representations set forth in the original Master Marketing report, which represented that Master Marketing was engaged in advertising activities. When the letter was written, the McDougals had received and spent all the proceeds of the $300,000 loan on personal expenses. The letter was signed by Susan McDougal with "Thank you" handwritten under her name.[149]

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[147] See Tr. at 6775-76, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark.) (testimony of Patkus). In his testimony, Special Agent Patkus broke payments into seven categories and gave precise figures in dollars and cents rather than rounding, as has been done here.

[148] Letter from Susan McDougal to David Hale (Apr. 3, 1987) (Doc. No. B-00001755); Tr. at 3357-61, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark.) (testimony of Hale).

[149] Letter from Susan McDougal to David Hale (Apr. 3, 1987) (Doc. No. B-00001755); Tr. at 3360, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark.) (testimony of

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Mrs. McDougal also made similar false representations to the SBA. Pursuant to its standard procedure, the SBA sent Mrs. McDougal a questionnaire, dated April 14, 1987, to monitor the Master Marketing loan. Naturally, the SBA requested information about the loan she had received from CMS. Specifically, the following relevant questions were posed and Mrs. McDougal hand wrote out the responses:

> Question 1: What are the terms and the unpaid balance of your company's financing from the SBIC?
>
> Answer: Interest only (12%) payable annually beginning April 3, 1987, through April 2, 1989; then 24 monthly installments of $14,122.05 until paid in full.
>
> . . . .
>
> Question 4: How were the proceeds of this financing used by your company?
>
> Answer: Operating Capital.
>
> . . . .
>
> Question 6: Who were the officers, directors and/or owners of your company at the time of the financing?
>
> Answer: Susan H. McDougal, sole proprietorship.[150]

The questionnaire was signed "Susan McDougal" and dated April 30, 1987.[151]

The grand jury subpoenaed Mrs. McDougal for handwriting exemplars.[152] Throughout one and one-half hours of giving exemplars, Mrs. McDougal was consistently evasive. In the

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Hale).

[150] SBA Questionnaire (Apr. 30, 1987) (Doc. No. H-00005389).

[151] Id.

[152] Grand Jury Subpoena No. 1087 (E.D. Ark. June 5, 1995).

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opinion of the handwriting experts, she intentionally disguised her handwriting.[153] Those experts also said other known exemplars showed the handwriting on the SBA questionnaire and the April 3, 1987 letter was Mrs. McDougal's.[154]

d. Evidence That Governor Clinton Had Knowledge of the Susan McDougal Loan.

According to David Hale and Jim McDougal, as discussed in Part A of this Report, Governor Clinton knew of and encouraged the CMS loan to Susan McDougal.[155] When asked about this issue, Susan McDougal refused to answer the grand jury's questions, and spent eighteen months in jail for contempt. President Clinton denied any knowledge of the loan.[156]

Hale said he met with McDougal and Tucker in the fall of 1985,[157] where McDougal said he needed CMS's help to clean some members of the "political family."[158] Hale understood the "political family" to be a reference to Governor Clinton and Jim Guy Tucker, among others.[159]

Hale claimed he had three contacts with Governor Clinton about the loan. In December 1985 or January 1986, Hale first ran into Governor Clinton at the Arkansas State Capitol

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[153] Tr. at 6257, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark. Apr. 30, 1996) (testimony of Heilman); see S. McDougal 6/23/95 Int. at 2-3.

[154] Tr. at 6275-78, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark. Apr. 30, 1996) (testimony of Riordan).

[155] See Tr. at 3221-25, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark.) (testimony of Hale); J. McDougal 4/3/97 GJ at 17-24.

[156] W. Clinton 4/28/96 Depo. at 24, 34-6, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark.).

[157] Tr. at 3094-3102, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark.) (testimony of Hale).

[158] Id. at 3102.

[159] Id. at 3105-06.

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building.[160] During the encounter, Governor Clinton asked Hale if he "would be able to help Jim and him out."[161] Hale replied that they were working on it.[162] Second, Hale said he met with McDougal and Governor Clinton at McDougal's office at Castle Grande where Susan McDougal's loan was discussed.[163] Governor Clinton allegedly reminded McDougal that "my name cannot show up anywhere on this," to which McDougal responded, "I've already taken care of all of that."[164] Governor Clinton, according to Hale and McDougal, offered to help guarantee the loan by posting his "property in Marion County" as security.[165] Third, Hale said two or three months after CMS had furnished the loan to Susan McDougal, he met Governor Clinton by chance at the University Mall in Little Rock.[166] According to Hale, Governor Clinton said: "Have you heard what that [expletive deleted] Susan has done?"[167] Hale thought that Governor Clinton was referring to Susan McDougal and the Master Marketing loan.[168]

Hale said McDougal delivered a Madison Guaranty assignment stock to him in April or

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[160] Hale 8/2/95 GJ at 24.

[161] Id.

[162] Id.

[163] Tr. at 3221-23, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark.) (testimony of Hale).

[164] Id. at 3224.

[165] Id. at 3223. See J. McDougal 4/3/97 GJ at 21-22. (McDougal remembered Governor Clinton saying, "I've got some land up in Marion County I can put up if you need collateral").

[166] Hale 8/2/95 GJ at 25-26.

[167] Id. at 26.

[168] Id. at 27.

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May 1987.[169] The Master Marketing loan was in arrears, and the stock assignment was McDougal's show of good faith in trying to secure the debt. Hale said when Jim McDougal delivered the stock assignment to Hale's office, he left a handwritten note that said, in effect, "I'm sorry about what happened. Maybe this will help you. Bill will do his part" (or "Bill will help").[170] Jim McDougal later said he could not remember writing such a note.[171] McDougal later said that he did not feel that Governor Clinton had any obligation to repay the $300,000 Master Marketing loan.[172]

There was some evidence that Governor Clinton might have had an interest in the Master Marketing plan. Part A of this Report discusses in detail the use of some of the proceeds of the Master Marketing loan. That Part shows that Governor and Mrs. Clinton were joint owners, with the McDougals, of Whitewater Development. The Whitewater Development benefited indirectly from a $135,000 Stephens Security loan to Flowerwood Farms, a McDougal Company, which was paid off with proceeds from the Master Marketing loan. Some of the $135,000 was used to fund in part a $3,000 contribution to Governor Clinton's April 1985 fundraiser, and approximately $25,000 went to make a payment owed by Whitewater Development. Another portion of the Master Marketing loan was used to make the down payment for property bought by Whitewater Development, known as Lorance Heights. In addition, Jim McDougal later told investigators he assumed that Governor Clinton and Susan McDougal had discussed the

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[169] Tr. at 3364-66, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark.) (testimony of Hale).

[170] Hale 8/2/95 GJ at 27. No such note was ever found.

[171] J. McDougal 8/1/96-6/9/97 at 52.

[172] Id.

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$300,000 loan, but that she had never told him they had.[173]

After his 1996 conviction and 1998 guilty plea, Tucker was asked about the fraudulent scheme involving Madison Guaranty and CMS, and about Hale's reference to McDougal wanting to clean some things up for "the political family." Tucker admitted he had only heard the term "political family" used by two people in Arkansas: David Hale and Governor Clinton. Tucker had in 1992 contemporaneously recorded in a journal Governor Clinton's statement about the "political family."[174] Tucker described his April 14, 1992, journal entry for a meeting where Governor Clinton referred to his "political family," which Tucker found remarkable because Hale had also used that term about Governor Clinton:

> "In private, Bill Clinton and I meet. Bill Clinton says he wanted to convince me of two things. One, he doesn't want to quit. Surprise. And two, neither he," quote, "Nor any member of his family or political family," closed quote, "Intend," question mark, "Or want to or have any desire to run for governor in '94, says I have done a wonderful job, had excellent judgment, etc., [etc.], etc., wants me to win in '94.[175]

Tucker also testified:

> A. I'm not going to make it any secret, I have the lowest minimum regard for Mr. Hale and for an awful lot of folks associated with this. But I have to say that as background to this. In his first statement on this, Mr. Hale, in November of --
>
> Q. '93?
>
> A. -- '93, stated and subsequently repeated that in a conversation variously described as having been with me or with me and -- I'm sorry, with Jim McDougal or with Jim McDougal and me, that McDougal had stated that -- in effect, that he and Hale needed to exchange loans with each other in order to take care of the political family.

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[173] Id. at 49.

[174] Tucker 4/21/98 GJ at 107-08.

[175] Id.

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"The political family" is a term that I don't recall ever having heard used in Arkansas. It's not a term I used. It's not a term that is familiar with me. I've been told by others that it's a phrase commonly used in Chicago and in other locations. I never heard it used in Arkansas, never, until David Hale used it in his testimony. I was surprised to note in my notes that that was a phrase that Governor Clinton had used.

Q. So is it -- other than hearing Hale use it --

A. Hale used it and apparently Clinton used it on this occasion. Those are the only two times that I remember having heard it used.[176]

A discussion of President Clinton's testimony on this issue appears in the analysis section of Part A of this Report.

B. Prosecutions Related to the Scheme Involving the $825,000 Fraudulent Loan.

1. Fraudulent Appraisals by Robert Palmer.

a. Facts.

Prior to Independent Counsel Starr's appointment, Independent Counsel Fiske had substantially completed his investigation of three real estate appraisers, including Robert Palmer, who had done work for Madison Guaranty. As noted above, Palmer played an important role in the $825,000 loan scheme; without the inflated appraisals provided by Palmer, the real estate transactions would not have justified the full amount of the loan.

In addition, shortly after Palmer appraised the Hale property to facilitate the $825,000 loan, Palmer engaged in another unlawful practice on behalf of Madison Guaranty. During the 1984 audit of Madison Guaranty, federal regulators found that Madison Guaranty did not consistently comply with federal regulations requiring appraisals for certain loans.[177] Although

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[176] Id. at 109-10.

[177] Statement of Facts at 1, United States v. Palmer, No. LR-CR-94-240 (E.D. Ark. Nov. 1994).

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Madison Guaranty entered into an agreement with the regulators to correct this practice, it failed to comply with the agreement.[178] Just prior to the March 1986 examination, Madison Guaranty officers devised a scheme to create false appraisals -- back-dated to the time of the loans for which they would be created -- and put them in the loan files to deceive the regulators.[179] Palmer and others created these false appraisals over a two-week period.[180]

b. United States v. Robert Palmer.[181]

Palmer and the Independent Counsel entered into a plea agreement in which Palmer agreed to plead guilty and cooperate with the government.[182] Palmer waived his right to an indictment, and the government filed a one-count criminal information charging Palmer with a felony violation of 18 U.S.C. § 371.[183] The information charged that Palmer and others conspired to violate 18 U.S.C. § 1006, in making false statements in a savings and loan document. This charge related to the false appraisals Palmer created prior to the March 1986 audit. On December 5, 1994, Palmer pleaded guilty to this charge. On June 16, 1995, Judge Howard sentenced Palmer to three years probation, with home detention for the first year, and a $5,000 fine. Palmer testified as a government witness in the trial of Tucker and the

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[178] Id. at 1-2.

[179] Id. at 2-3.

[180] Id. at 3.

[181] United States v. Palmer, No. LR-CR-94-240 (E.D. Ark.).

[182] Letter from Independent Counsel Kenneth W. Starr to David M. Hargis, Counsel to Mr. Palmer (Nov. 10, 1994).

[183] United States v. Palmer, No. LR-CR-94-240 (E.D. Ark.).

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McDougals.[184]

2. **United States v. Larry Kuca.**[185]

The facts relating to Kuca's fraudulent loan from CMS are discussed above. Kuca agreed to plead guilty and cooperate with the government. The government filed a one-count information against Kuca, charging him with a misdemeanor conspiracy offense in violation of 18 U.S.C. § 371.[186] The information related to Kuca's $149,000 loan from CMS, and charged that Kuca conspired with others to misapply SBA funds in violation of 18 U.S.C. § 657. On July 13, 1995, he pleaded guilty to this charge. In pleading guilty, he admitted that he prepared and submitted a false loan application to CMS so he could pay off the advance on commissions.

Kuca was sentenced on October 11, 1995, by United States Magistrate Judge H. David Young of the Eastern District of Arkansas to two years probation and eighty hours of community service, and was ordered to make restitution in the amount of $65,862 to the SBA. Kuca testified as a government witness at the Tucker and McDougals trial.[187]

3. **United States v. Stephen A. Smith.**[188]

The facts regarding the fraudulent loan from CMS to Steve Smith are discussed above. Smith agreed to plead guilty to a misdemeanor and cooperate with the government. The government filed a one count information against Smith charging him with a misdemeanor

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[184] See Tr. at 2147-70; 2282-84, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark. Mar. 26-27, 1996) (testimony of Robert Palmer).

[185] United States v. Kuca, No. LR-CR-95-150 (E.D. Ark.).

[186] United States v. Kuca, No. LR-CR-95-150 (E.D. Ark. July 13, 1995).

[187] See Tr. at 4641-94, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark. Apr. 11, 1996) (testimony of Larry Kuca).

[188] United States v. Smith, No. LR-CR-95-118 (E.D. Ark. June 8, 1995).

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offense of conspiracy in violation of 18 U.S.C. § 371 relating to the fraudulent $65,000 loan Smith obtained from CMS. The information charged that Smith conspired with others to misapply SBIC funds in violation of 18 U.S.C. § 657. On June 8, 1995, Smith pleaded guilty to this charge. In pleading guilty, Smith admitted that he had never intended to use the proceeds of the $65,000 loan for the purposes stated in the application.[189]

Smith testified as a government witness at the United States v. McDougals and Tucker trial in March 1996.[190] On July 12, 1996, United States Magistrate Judge John F. Forster sentenced Smith to one-year probation, a $1,000 fine, and 100 hours of community service.

On September 17, 1999, Smith filed a letter grievance in the United States District Court for the Eastern District of Arkansas (Western Division), which requested in part that the District Court appoint counsel to investigate whether the "Independent Counsel solicited or attempted to solicit false testimony."[191] Smith claimed that the Independent Counsel tried to persuade him to read a false statement to the grand jury which subsequently indicted the McDougals and Governor Tucker. The district court concluded that Smith's own testimony in the McDougal/Tucker trial refuted his allegation:

> Q. Have I ever asked you to lie about anything, Dr. Smith?
>
> A. No, you haven't.
>
> Q. And in looking at the grand jury statement the day that you came in and reviewed the draft, did anyone try to pressure you to keep the language about Tucker in that grand jury statement?

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[189] Id.

[190] See Tr. at 4804-4940, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark. Apr. 15, 1996) (testimony of Stephen Smith).

[191] Smith v. Starr, 99 F. Supp. 2d 1037, 1038 (E.D. Ark. 2000).

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A. No. When I suggested that I wasn't comfortable with that you took it out.

Q. And was it made clear to you, Dr. Smith, when you came in that this was just a draft statement to work off of?

A. Yes.

Q. And that you were the one that had to be comfortable that it was a hundred percent true and accurate?

A. Yes, ma'am.[192]

The district court concluded that the evidence did not support Smith's allegations and did not warrant the appointment of counsel.[193]

4. United States v. James B. McDougal, Jim Guy Tucker, and Susan H. McDougal.[194]

As discussed in detail above, James and Susan McDougal and Jim Guy Tucker were involved in the $825,000 loan scheme. Each played crucial roles in coordinating and executing the scheme, and each was eventually convicted of two or more felony counts.

a. Indictment.

On August 17, 1995, a Little Rock grand jury returned a multiple-count indictment against the McDougals and Tucker, who was then Governor of Arkansas.[195] The indictment charged 21 counts:

- **Count 1:** All three defendants were charged with conspiracy in violation of 18 U.S.C. § 371 regarding the various fraudulent transactions related to the $825,000 Dean Paul loan.

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[192] Id. at 1041.

[193] Id. (Smith's allegation that the Independent Counsel pressured him to lie is directly contradicted by his own trial testimony).

[194] United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark. Aug. 17, 1995).

[195] Id.

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- **Counts 2 and 3:** All three defendants were charged with wire fraud in violation of 18 U.S.C. § 1343 regarding two different SBA transfers of funds to CMS in response to the infusion of the "profits" from the Dean Paul loan.

- **Count 4:** McDougal and Tucker were charged with savings and loan fraud by submitting false loan documents to Madison Guaranty in regard to the Dean Paul loan in violation of 18 U.S.C. § 1344.

- **Counts 5, 6, and 7:** These charges related to McDougal's role in the fraudulent loan to Kuca. Count 5 charged him with mail fraud in violation of 18 U.S.C. § 1341 for causing Hale to submit the fraudulent Form 1031. Count 6 charged McDougal with fraudulently concealing from the FHLBB his role in the supposed advance of commissions to Kuca in violation of 18 U.S.C. § 1006. And Count 7 charged McDougal with aiding and abetting the making of false statements to the CMS, a federal licensed SBIC, regarding this loan in violation of 18 U.S.C. § 1014 and 2.

- **Counts 8 through 11:** McDougal and Tucker were charged with various felonies related to the $65,000 loan to Smith. Count 8 charged them with mail fraud in violation of 18 U.S.C. § 1341 for causing Hale to mail to the SBA false forms to accomplish the fraudulent scheme. Count 9 charged them with aiding and abetting the misapplication of the proceeds of this loan in violation of 18 U.S.C. §§ 657 & 2. Count 10 charged them with aiding and abetting the defrauding of the SBA regulators by making false entries into records in violation of 18 U.S.C. § § 1006 & 2. Count 11 charged them with aiding and abetting the false statements to CMS to procure the $65,000 loan in violation of 18 U.S.C. §§ 1014 & 2.

- **Count 12:** All three defendants were charged with mail fraud in violation of 18 U.S.C. § 1341 for causing Hale to mail a false Form 1031 to the SBA in relation to the CMS loan to Castle Sewer and Water.

- **Counts 13 through 16:** These charges related to the McDougals' roles in the fraudulent $300,000 Master Marketing loan. Count 13 charged them with mail fraud in violation of 18 U.S.C. § 1341 for causing Hale to mail a fraudulent Form 1031 to the SBA in connection with the loan. Count 14 charged them with misapplying the loan proceeds, and aiding and abetting the misapplying of the proceeds, in violation of 18 U.S.C. §§ 657 & 2. Count 15 charged them with making false entries in CMS records, and aiding and abetting the making of false entries, regarding this loan, which were made to deceive the SBA auditors in violation of 18 U.S.C. §§ 1006 & 2. And Count 16 charged them with making false statements to CMS and aiding and abetting the making of false statements in violation of 18 U.S.C. §§ 1014 & 2.

- **Counts 17, 18, and 19:** The counts charged McDougal in relation to the 1308

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Main Street land flip transactions. Count 17 charged him with misapplying the loan proceeds of the $125,000 loan secured by the 1308 Main Street property, and aiding and abetting such misapplying of proceeds, in violation of 18 U.S.C. §§ 657 & 2. Count 18 charged him with misapplying the funds of Madison Financial, and caused the misapplying of funds, regarding the $18,000 supposed rent payment to Bill Henley in violation of 18 U.S.C. §§ 657 & 2. Count 19 charged McDougal with making false statements, and causing such statements to be made, in the records of Madison Guaranty, namely that Henley owned the 1308 Main Street property since August 1, 1985, to justify the $18,000 "rent" payment in violation of 18 U.S.C. §§ 1006 & 2.

- **Counts 20 and 21:** The counts charged Governor Tucker in relation to the October 1987 fraudulent Southloop loan from CMS. Count 20 charged Governor Tucker with misapplying, and aiding and abetting the misapplying of, this loan in violation of 18 U.S.C. §§ 657 & 2. Count 21 charged him with making, and aiding and abetting the making, of false statements in the records of CMS in violation of 18 U.S.C. §§ 1006 & 2.

The case was assigned to United States District Judge George Howard Jr. in the Eastern District of Arkansas.

b. Pre-Trial Litigation.

Judge Howard initially scheduled the trial for October 10, 1995. The defendants filed dozens of motions on discovery, evidentiary, and other issues. These motions resulted in substantial pre-trial litigation which delayed the start of the trial.

Between September and December 1995, the defendants filed nine motions to dismiss the case, all of which were ultimately denied. On September 25, 1995, Governor Tucker moved to dismiss the indictment, claiming that the Independent Counsel provisions of the Ethics in Government Act, which gave the Independent Counsel the authority to prosecute the defendants, were unconstitutional. That same day, Governor Tucker also filed a motion to dismiss the indictment, arguing that the Independent Counsel lacked jurisdiction and that the Independent Counsel's prejudicial interference with the grand jury violated Tucker's due process rights.

On September 27, 1995, Jim McDougal filed a motion to dismiss the indictment under

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Fed. R. Crim. P. 12(b) (1) for prosecutorial irregularity. McDougal argued that, since the Independent Counsel Reauthorization Act of 1987 expired in December of 1992 and, rather than reenact the law, Congress had passed amendments to the Act in June of 1994, there existed the serious legal question of whether amendments to the Act, passed after the Act lapsed, constitute reenactment of the law.

On October 2, 1995, Governor Tucker and Jim McDougal both filed similar motions to dismiss the case for alleged prejudicial delay. That same day, Susan McDougal filed a motion to dismiss, alleging that the Independent Counsel lacked jurisdiction to prosecute her for the stated offenses. On October 20, 1995, Jim McDougal moved to dismiss the indictment under the Fifth Amendment, which prohibits a person from being twice put in jeopardy for the same offense, and Fed. R. Crim. P. 12(b). In the face of all these motions, Judge Howard rescheduled the trial to January 16, 1996.

On October 25, 1995, Judge Howard denied Governor Tucker's motion to dismiss as to the constitutionality of the statute. On November 15, 1995, Judge Howard denied Governor Tucker's motion to dismiss for lack of jurisdiction, and on November 22, 1995, Governor Tucker filed an appeal from this order. The court of appeals eventually dismissed this appeal as untimely.[196] On December 1, 1995, Governor Tucker filed a supplemental motion to dismiss for prejudicial delay.

On December 11, 1995, Judge Howard denied McDougal's motion to dismiss under the Fifth Amendment and Fed. R. Crim. P. 12(b); on December 13, 1995, McDougal filed an appeal from this order. With leave of the court, Governor Tucker filed a second supplemental motion to dismiss for prejudicial delay on December 12, 1995. On December 14, 1995, Judge Howard

[196] United States v. McDougal et al., No. LR-CR-95-3993 (8th Cir.).

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rescheduled the trial to March 4, 1996. On January 12, 1996, Judge Howard denied McDougal's motion to dismiss for prosecutorial irregularity.

On February 1, 1996, Susan McDougal moved to subpoena President Clinton for testimony, which Judge Howard granted on February 5, 1996. On February 26, 1996, Jim McDougal filed a motion to compel President Clinton to personally appear at trial. The President in his personal capacity opposed this motion, as did the United States Department of Justice.

c. Trial and Guilty Verdicts.

The trial began on March 4, 1996. On March 20, 1996, Judge Howard ordered that President Clinton's testimony be taken in a videotaped deposition. President Clinton gave that deposition at the White House on April 28, 1996.

On May 3, 1996, various news entities filed a motion to obtain a copy of President Clinton's videotaped deposition, which had been filed under seal by order of the Court. Judge Howard quickly ordered the public release of the transcript of the deposition through the normal procedures after it had been shown to the jury.

On May 7, 1996, the day after Judge Howard ruled, the movants filed a motion for reconsideration, again seeking immediate access to the videotape. Judge Howard quickly denied that motion, and the media immediately appealed the ruling.

Following oral arguments on August 12, 1996, the United States Court of Appeals entered an order stating, "[f]or reasons that will be stated in an opinion to follow, we affirm the district court's denial of access to the videotape."[197] The Court concluded that: 1) the videotape was not a judicial record; 2) even if the videotape were a judicial record, it was not an abuse of

[197] United States v. McDougal et al., 103 F.3d 651, 652 (8th Cir. 1996).

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discretion to deny access; and 3) denial of access did not violate the First Amendment where public and press were given access to information in the videotape.[198]

On May 6, 1996, Judge Howard held oral argument on the pending motions for acquittal from all three defendants. He denied the motions for dismissal due to selective prosecution, which merely rehashed arguments Judge Howard had previously rejected. He also denied as to all counts Jim McDougal's motion for acquittal.

Judge Howard denied Governor Tucker's motion in part and granted it in part: Judge Howard directed an acquittal for Governor Tucker on Counts 8 through 11, which had charged him with crimes related to the $65,000 CMS loan to Smith; Judge Howard denied Governor Tucker's motion as to all other counts. Similarly, Judge Howard granted Susan McDougal's motion in part and denied it in part: The Court directed a verdict of acquittal on Count 1, which charged Susan McDougal with joining the overall conspiracy, Counts 2 and 3, which charged her with wire fraud regarding two transfers from the SBA to CMS, and Count 12, which charged her with mail fraud relating to CMS's $150,000 loan to CSW. Judge Howard ruled that the other four counts against McDougal would not be dismissed.[199]

Following these rulings, on May 7, 8, and 9, 1996, Jim McDougal testified in his own defense. On May 9, the defendants presented President Clinton's videotaped deposition to the jury. The defense then rested, calling no other witnesses, and the jury began deliberating on May 16.

On May 28, 1996, the jury returned, in part, guilty verdicts as to each defendant:

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[198] Id. at 657-59.

[199] The government cannot appeal a judge's granting of a motion for acquittal prior to the jury's verdict. Green v. United States, 355 U.S. 184, 188 (1957).

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Jim McDougal -- The jury convicted Jim McDougal on eighteen of the nineteen counts against him. The jury acquitted him on Count 12, which charged him with mail fraud relating to the $150,000 CMS loan to CSW.

Susan McDougal -- The jury convicted Susan McDougal of all four felony counts submitted to it, all relating to the CMS loan to Susan McDougal d/b/a Master Marketing.

Jim Guy Tucker -- The jury convicted Governor Tucker of two of the seven counts submitted to it: It convicted him of the overall conspiracy (Count 1) and mail fraud regarding the $150,000 loan to CSW (Count 12). It acquitted him of wire fraud regarding the transfers of SBA funds to CMS (Counts 2 and 3), of bank fraud regarding the $825,000 loan to Dean Paul (Count 4), of misapplying the $100,000 Southloop loan (Count 20) , and of causing false entries regarding that loan (Count 21).

d. Post-Trial Motions, Sentences, and Appeals.

Jim McDougal -- After his convictions, McDougal agreed to cooperate with the government, and began doing so in early August 1996.[200] He informed Independent Counsel investigators that much of his trial testimony was perjurious, and stated that, in his view, President Clinton had also lied during his testimony.

On April 14, 1997, Judge Howard sentenced Jim McDougal to concurrent terms of five years imprisonment for fifteen of the counts for which he was convicted, with two years suspended. On the remaining three counts, Judge Howard suspended the imposition of sentence and imposed a three-year probationary term. McDougal's effective sentence was three years imprisonment followed by three years of probation. The Court also imposed a $10,000 fine and ordered McDougal to pay $4,274,301.27 in restitution, divided between the FDIC and the SBA.

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[200] J. McDougal 4/2/97 GJ at 3.

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McDougal appealed, claiming that the nine-year delay in indicting him violated his due process rights and that trying him for conspiracy after he had been acquitted on a conspiracy charge in 1990 violated the constitutional prohibition on double jeopardy.[201]

The court of appeals concluded that he had not been prejudiced by the delay and that the conspiracy in this case was distinct from the one of which he had been acquitted. The court of appeals affirmed the district court's determination.

McDougal began serving his prison sentence in June 1997. On March 8, 1998, McDougal died at the Federal Medical Center, Fort Worth, Texas. The Bureau of Prisons concluded that his death was due to natural causes.

Susan McDougal -- On August 20, 1996, Judge Howard sentenced Susan McDougal to twenty-four months on three counts of her conviction (the court suspended sentence on the fourth), to be followed by three years probation, restitution of $300,000 to the SBA, a $5,000 fine, and over 300 hours of community service.

McDougal appealed her conviction, raising numerous issues. On February 23, 1998, the United States Court of Appeals for the Eighth Circuit affirmed her conviction.[202] McDougal began serving her two-year sentence on March 8, 1998, after an 18-month term of the imprisonment for her civil contempt of a court order. On June 25, 1998, after McDougal had served three and one-half months of her sentence, Judge Howard granted her motion for reduction of sentence pursuant to Fed. R. Crim. P. 35, due primarily to health reasons, and reduced her sentence to time served. As a condition of probation McDougal was required to serve a ninety-day period of home confinement.

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[201] United States v. McDougal, 133 F.3d 1110, 1113 (8th Cir. 1997).

[202] United States v. McDougal, 137 F.3d 547 (8th Cir. 1998).

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Jim Guy Tucker -- After trial, Tucker filed a motion for new trial, alleging juror misconduct. Tucker claimed that during trial the juror had married a former prisoner whom Tucker had denied executive clemency and had not revealed any such connection, thereby denying Tucker an unbiased jury. Tucker also claimed that the juror discussed the trial during its pendency with someone who was trying to influence the outcome. After a hearing, Judge Howard denied the motion, concluding that the jury had not had access to extraneous evidence in deliberating on the verdict.

On August 19, 1996, Judge Howard held a sentencing hearing for Tucker in which Tucker presented medical evidence showing that if he did not have a liver transplant, his life was in jeopardy, and that if he were incarcerated, there was little probability he would get a transplant. Judge Howard sentenced Tucker to eighteen months home confinement as part of a four-year probationary term, restitution of $150,000, a $25,000 fine, and specified community service. Tucker then appealed his conviction and the order denying him a new trial for supposed juror misconduct.

On February 23, 1998, the United States Court of Appeals for the Eighth Circuit rejected Tucker's challenge to the sufficiency of the evidence supporting his conviction. The court of appeals, however, remanded the case to the district court for a further hearing on issues relating to possible juror misconduct. A hearing was scheduled for September 11, 1998, but was continued due to Tucker's recurring health problems. A three-day evidentiary hearing was ultimately held in December 1998. On February 17, 1999, the district court concluded that there was no evidence that the juror was dishonest or biased and there was no evidence of any improper communication with the juror.[203] The district court, therefore, denied Tucker's motion

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[203] United States v. Tucker, 36 F. Supp. 2d 1110, 1117 (E.D. Ark. 1999).

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for a new trial.[204] Tucker again appealed, and on September 13, 1999, the case was argued before the Eighth Circuit. On February 27, 2001, the Eighth Circuit upheld Tucker's conviction.

IV. WEBSTER HUBBELL'S ROSE LAW FIRM BILLING PRACTICES.

A. Introduction.

Before the appointment of Independent Counsel Starr, regulatory Independent Counsel Fiske was investigating, among other matters, possible fraud and tax violations relating to Hubbell's billing and expense practices at the Rose Law Firm. After his appointment, Independent Counsel Starr continued the investigation and sought explicit jurisdictional authority from the Special Division. The Special Division issued an order dated September 1, 1994 and pursuant to 28 U.S.C. § 594(e), confirming that the Independent Counsel's jurisdiction included the question of "[w]hether Hubbell . . . violated any federal criminal law . . . in his billing or expense practices while a member of the Rose Law Firm," and authorizing prosecution of "all matters arising from that investigation."[205]

Mr. Fiske's investigation discovered that while Hubbell had been a partner at the Rose Law Firm in Little Rock, he had engaged in an extensive scheme to defraud both his clients and the firm. In addition to private clients and the firm, the victims of Hubbell's scheme included the FDIC and the RTC.

Mr. Fiske discovered substantial evidence detailing Hubbell's fraud. Specifically, Mr. Fiske identified approximately 400 firm checks that Hubbell signed or were made payable for his benefit during the period from 1989 until he left the firm in January 1993 to become Associate

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[204] Id. at 1118.

[205] Order, In re: Madison Guaranty Sav. & Loan Ass'n, (D.C. Cir. [Spec. Div.] Sept. 1, 1994).

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United States Attorney General.[206] Approximately 300 of these checks, totaling more than half a million dollars, were made payable to banks and credit card companies where Hubbell had accounts.[207] While Hubbell had indicated brief, work-related justifications for most of the expenditures, the credit card documentation revealed that Hubbell had paid for the vast majority of his personal credit card bills, which included over $300,000 of personal expenditures, with Rose Law Firm client advance checks.[208]

B. United States v. Webster Hubbell.[209]

On December 6, 1994, Hubbell pleaded guilty to one felony violation of the mail fraud statute (18 U.S.C. § 1341) and felony income tax evasion (26 U.S.C. § 7201).[210] Hubbell admitted that from 1989 to 1992 he defrauded the Rose Law Firm and its clients, adding at least $394,000 to the legitimate charges.[211] At sentencing, Hubbell agreed that the amount of the fraud was in fact $482,000.[212] On June 23, 1995, he was sentenced by Judge Howard to twenty-one months imprisonment followed by three years of supervised release, and was ordered to

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[206] Final Report of Robert B. Fiske Jr., Independent Counsel, In re: Madison Guaranty Savings and Loan Association at 42 (D.C. Cir. [Spec. Div.] (Oct. 6, 1994) (under seal) [hereinafter "Fiske Report"].

[207] Id. at 42-43.

[208] Id. at 43.

[209] United States v. Hubbell, No. LR-CR-94-241 (E.D. Ark. Dec. 6, 1997).

[210] Id.

[211] See Plea Proceedings Tr. at 7-9, United States v. Hubbell, No. LR-CR-94-241 (E.D. Ark. Dec. 6, 1994); Plea Agreement at 3, United States v. Hubbell, No. LR-CR-94-241 (E.D. Ark. Dec. 6, 1994).

[212] Sentencing Tr. at 26, United States v. Hubbell, No. LR-CR-94-241 (E.D. Ark. June 28, 1995).

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make restitution to the Rose Law Firm in the amount of $135,000.

V. SCHEME TO CONCEAL ROSE LAW FIRM'S CONFLICTS OF INTEREST FROM FEDERAL AGENCIES.

A. Introduction.

On November 13, 1998, in the District of Columbia, a federal grand jury returned an indictment charging Hubbell with 15 felony counts relating to the true nature of the relationship of the Rose Law Firm and Madison Guaranty: Cover-up by Scheme (one count),[213] Corruptly Impeding the Functions of the FDIC and the RTC (one count),[214] Fraud on the FDIC and the RTC (one count),[215] False Statement to the FDIC (four counts),[216] False Statement to the RTC (two counts),[217] Perjury (one count),[218] and Mail Fraud (five counts).[219] These charges all related to Hubbell's efforts to prevent the FDIC, the RTC, and the United States House of Representatives from discovering Rose's relationship with Madison Guaranty that would have precluded Rose from obtaining and maintaining employment contracts with the RTC and FDIC. Hubbell attempted to conceal his prior representation of Seth Ward because many of the loans to Ward identified as fraudulent by federal bank regulators were precisely the same sort of loans that were considered in measuring damages in Madison Guaranty v. Frost and Company ("Frost").

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[213] 18 U.S.C. § 1001.

[214] 18 U.S.C. § 1032(2).

[215] 18 U.S.C. § 1006.

[216] 18 U.S.C. § 1007.

[217] 18 U.S.C. § 1001.

[218] 18 U.S.C. § 1621.

[219] 18 U.S.C. §§ 1341, 1346; see United States v. Hubbell, No. 98-394 (D.D.C.).

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The indictment alleged that Hubbell, as lead FDIC and RTC attorney and billing partner on Frost handled by Rose, and later as Associate Attorney General of the United States, falsified, covered up by scheme, and concealed from agents and investigators of the FDIC and RTC the true nature of his, Rose's, and Hillary Rodham Clinton's relationships with Seth Ward, Madison Guaranty, Madison Financial, and a series of transactions that came to be known as the IDC/Castle Grande transactions. These transactions involved, among others, Jim McDougal, Seth Ward, Madison Guaranty, Madison Financial, and Industrial Development Company ("IDC"). Hubbell, Mrs. Clinton, and other Rose attorneys performed legal work on IDC/Castle Grande.

B. The Cover-Up Alleged in the Indictment.

The indictment alleged that Hubbell participated in a scheme that corruptly endeavored to impede and impeded the functions of the FDIC and RTC. As alleged in the indictment, this scheme lasted from March 1989 to December 1995, as Hubbell further schemed to falsify, conceal, and cover up the nature of his, Rose's, and Hillary Clinton's relationships with Ward, Madison Guaranty, Madison Financial, and the IDC/Castle Grande transactions discussed above ("IDC/Castle Grande transactions"). The purpose of this scheme was to defraud the FDIC and RTC of money by means of false and fraudulent pretenses, representations, statements, and promises; to deprive the FDIC and RTC of their rights to Hubbell's honest services; to conceal, through false, evasive, and misleading statements and material omissions the true facts about Hubbell's, Rose's, and Hillary Clinton's relationships with Ward, Madison Guaranty, Madison Financial, and the IDC/Castle Grande transactions; and to cause and create undue delay and unnecessary confusion in FDIC and RTC investigations.

In March 1989, after the FDIC became Madison Guaranty's managing agent, the FDIC

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retained Hubbell and Rose to assume the handling of a pending civil lawsuit on behalf of Madison Guaranty, Frost.[220] Hubbell was the lead attorney and billing partner for Madison Guaranty, the FDIC, and, later, for the RTC on Frost.[221] In Frost, which began in 1988, Madison Guaranty sued Frost & Company, Jimmie D. Alford, and other individuals for alleged accounting malpractice in connection with Frost's audits of Madison Guaranty.[222] Ward's Madison Guaranty loans were at issue as potential damages in Frost.[223] As part of the scheme, Hubbell concealed from the FDIC and the RTC the fact that Hubbell and Rose had actual and potential conflicts of interest with the FDIC and the RTC in regard to Frost.[224] It was a further part of the scheme that Hubbell concealed from the FDIC and the RTC the nature and extent of the legal work that Rose had performed for Madison Guaranty from April 1985 to July 1986.[225] The scheme also included Hubbell's efforts to conceal Rose's legal work for Ward, Rose's submission of Frost's audits to the Arkansas Securities Department, and Rose's billing of Madison Guaranty during 1985 and 1986 for legal services performed in connection with the IDC/Castle Grande

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[220] Original Complaint, Madison Guaranty v. Frost and Company, No. 88-1183 (Pulaski County, Ark. Feb. 28, 1988) (Doc. Nos. CT 00000023 through 28).

[221] Description of Hubbell's duties as lead attorney and billing partner (Doc. No. 105-00077232); Speed 3/17/98 GJ at 60.

[222] Original Complaint, Madison Guaranty v. Frost, No. 88-1183 (Pulaski County, Ark. Feb. 28, 1988) (Doc. Nos. CT 00000023 through 28).

[223] Id. at 3 (Doc. No. CT 00000025).

[224] Hearings on the Failure of Madison Guaranty Savings and Loan Association and Related Matters Before the House Comm. on Banking and Financial Services, 104th Cong. 47, 57-59 (Aug. 10, 1995) (testimony of W. Hubbell) [hereinafter "House Banking Comm. Hearing"].

[225] Id.

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transactions.[226] As alleged in the indictment, Hubbell also made multiple false statements and withheld other information as part of this scheme to conceal necessary information from the RTC and FDIC investigations.[227]

C. Hubbell Pleaded Guilty.

On June 30, 1999, pursuant to a plea agreement, Hubbell pleaded guilty to the false statements scheme charged in count one of the indictment,[228] and a superseding misdemeanor information charging a willful failure to pay tax in a separate case, the latter of which was later vacated.[229] On the felony scheme, Hubbell agreed to and was sentenced to one year of probation, no restitution, no fine, and a special assessment of $100.00.[230] On the Independent Counsel's motion, the remaining counts of the RTC/FDIC indictment were dismissed with

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[226] Id.

[227] Breslaw 7/28/94 Sen. Depo. at 28-29; House Banking Comm. Hearing, supra note 224, at 45-46 (Aug. 10, 1995) (testimony of A. Breslaw).

[228] 18 U.S.C. § 1001.

[229] 26 U.S.C. § 7203; Plea Agreement, United States v. Hubbell, No. 98-0394 (D.D.C. June 30, 1999). As part of the plea agreement, the Independent Counsel agreed to dismiss with prejudice the tax indictment (Cr. No. 98-0151, D.D.C.) as to Suzanna Hubbell, Michael C. Schaufele, and Charles Owen; to not further prosecute Hubbell, nor refer him to the United States Department of Justice for prosecution; and to accept a plea to the willful failure to pay tax charge on the condition that the United States obtain a favorable result before the United States Supreme Court on its act of production immunity argument. Plea Agreement at 3-5, United States v. Hubbell, No. 98-0394 (D.D.C. June 25, 1999). When the United States Supreme Court concluded that Hubbell's compelled act of producing certain tax records violated the Fifth Amendment (see United States v. Hubbell, 120 S.Ct. 2037, 2048 (2000)), the Independent Counsel promptly moved to vacate that conviction. Motion of the United States to vacate Judgment of Conviction and Dismiss the Superseding Criminal Information (Oct. 19, 2000). The United States District Court for the District of Columbia vacated the conviction on Oct. 20, 2000. Order of Judge Robertson (Oct. 20, 2000).

[230] Judgment, United States v. Hubbell, No. 98-0394 (D.D.C. July 1, 1999).

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prejudice.[231]

VI. TUCKER, MARKS, AND HALEY TAX CONSPIRACY.

A. Introduction.

With information provided by David Hale, regulatory Independent Counsel Robert Fiske began investigating a 1987 bankruptcy filed in the Northern District of Texas which involved cable television properties that Jim Guy Tucker and businessman William J. Marks owned. The investigation focused on possible tax crimes committed through the use of a sham bankruptcy. Independent Counsel Starr continued this investigation, and thereafter sought and received referrals, dated December 19, 1994 and July 28, 1995, from the Special Division covering these aspects of Independent Counsel Fiske's investigation.

The investigation uncovered sham transactions and fraudulent misrepresentations that the co-conspirators -- Tucker, Marks, and John Haley, Tucker's tax attorney -- contrived and executed in order to evade corporate level taxes altogether and to reduce capital gains tax liability by fraudulently increasing the tax bases of assets. One of the corporations involved in the transactions was governed by subchapter C of the Internal Revenue Code.[232] Income earned by a C corporation is generally taxed at the corporate level.[233] If post-tax earnings of a C corporation are distributed to shareholders, that distribution is generally taxed again at the individual level.[234] Certain small business corporations may seek status as a subchapter S

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[231] Id.

[232] 26 U.S.C. §§ 301-385.

[233] 26 U.S.C. § 11(a).

[234] 26 U.S.C. §§ 301-307.

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corporation by filing a form with the Internal Revenue Service ("IRS").[235] If subchapter S status is granted, income to the S corporation is generally not taxed at the corporate level, but instead passed through pro rata to the shareholders and taxed only at the individual level.[236]

The two corporations central to this matter were Cablevision Management, Inc. ("CMI"), an S corporation, and Planned Cable Systems Corporation ("PCS"), a C corporation.[237] In early 1987, Tucker, then a practicing lawyer in Little Rock, owned 100 percent of CMI's stock.[238] Marks owned eighteen percent of PCS's stock and served as its president. Meredith Corporation owned the other eighty-two percent of PCS's stock.[239] In addition to its PCS stock, Meredith held a note that obligated PCS to pay Meredith $7.9 million.[240]

Meredith wanted to get out of the cable television business and offered to sell its PCS stock and the income note for approximately $6 million, the amount that Meredith had invested in PCS at that point. PCS owned several cable television systems, including Plantation cable system in Plantation, Florida. In early 1987, Tucker and Marks agreed to form a joint cable venture and divide the profits equally.[241] On March 1, 1987, Tucker signed a stock purchase

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[235] 26 U.S.C. § 1362.

[236] 26 U.S.C. §§ 1363, 1366.

[237] Letter from Jim Guy Tucker to Elizabeth Munnell, Edwards & Angell (May 13, 1987) (Doc. Nos. 287-00000162 through 171).

[238] Debt Placement Memo Prepared by Waller Capital Corporation (undated) (Doc. Nos. 287-00000311 through 427).

[239] Letter from Frost & Company to National Fleet Bank (June 9, 1987) (Doc. No. 85-00040069).

[240] Income note for $7,906,888.48 (Oct. 10, 1984) (Doc. Nos. 199-00222061 through 062).

[241] Letter from Frost & Company to National Fleet Bank (June 9, 1987) (Doc. No. 85-

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agreement with Meredith, agreeing to purchase Meredith's eighty-two percent of PCS and the note for $6 million.[242]

In June 1987, a bank agreed to lend Tucker and Marks $8.5 million, approximately $6 million of which was used to purchase the PCS stock and note.[243] As part of the collateral, the two pledged to the bank all of the cable television assets of PCS and CMI.[244] Tucker and Marks were also required to place $500,000 as collateral into an escrow account, $300,000 of which came from a fraudulent loan from Hale's company, CMS, to another company D&L Telecommunications. When Tucker and Marks learned that they would have to put up $500,000 into an escrow account as collateral, Tucker told Marks that this would be no problem because Tucker had a friend that he had borrowed money from before, meaning David Hale.[245]

According to Hale, Jim Guy Tucker talked with him about a CMS loan to D&L Telecommunications. Hale dealt solely with Jim Guy Tucker on the matter.[246] Hale said at the time the loan was funded, and the funds wired to the bank designated by Tucker, it was his recollection that he had not yet received any loan documents or paperwork from Tucker. CMS ultimately received a letter from Jim Guy Tucker to David Hale bearing the date June 4, 1987

00040069).

[242] Stock purchase agreement between Jim Guy Tucker and William Straw, Meridith Corporation Vice President-Finance (Mar. 1, 1987) (Doc. Nos. 199-00081477 through 485).

[243] Letter from Frost & Company to Fleet National Bank (June 9, 1987) (Doc. No. 85-00040069).

[244] Security Agreement Between Jim Guy Tucker and William Marks and National Fleet Bank (June 10, 1987) (Doc. Nos. 199-00219105 through 117).

[245] William J. Marks Sr. 8/20-11/4/97 Int. at 5.

[246] Hale 6/7/97 Statement to the grand jury.

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enclosing certain documents including a promissory note for $300,000 signed by Jim Guy Tucker and William J. Marks. Tucker represented that Marks was a principal owner of D&L and a 50% owner and president of Cablevision Management Inc. Tucker represented that D&L was going to be doing extensive work for CMI in underground cable construction in Arkansas, especially in west Pulaski County.[247]

The "Assurance of Compliance" document submitted on behalf of D&L Telecommunications was signed by William Marks, president, and was attested to be Jim Guy Tucker.[248] The promissory note bearing the date June 4, 1987 to Capital Management Services was signed "D&L Telecommunications, Inc., William J. Marks President," and attested by "Betty Tucker, Secretary." It was also signed individually by Jim Guy Tucker, Betty Tucker, and William J. Marks.[249]

D&L Telecommunications is an underground electrical utility contractor, located in Florida. It primarily was involved in excavating trenches, placing power cables and other cables for cable TV businesses.[250] Donald Smith became president of D&L in 1983 and served in the capacity continuously through the time when he appeared before the grand jury in 1995. No person had ever served as president other than him.[251] At some point, William Marks became a

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[247] Letter from Jim Guy Tucker to David Hale (June 4, 1987) (Doc. No. LL07112).

[251] Assurance of Compliance of D&L Telecommunications Inc. submitted to the Small Business Association (June 7, 1987) (Doc. Nos. LL07116 through LL07117).

[249] Promissory Note to Capital Management Services (June 4, 1987) (Doc. No. LL07102-103).

[250] D. Smith 1/24/95 GJ at 3.

[251] Id. at 4.

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50% owner of the company with Smith owning the other 50%.[252] Under their arrangement, Smith had an irrevocable proxy on the majority of the voting shares, and thus, Smith controlled D&L. At no time was William Marks ever an officer of the corporation.[253] Smith never met Betty Tucker, and Betty Tucker was never an officer or director of D&L Telecommunications.[254]

According to Don Smith, D&L Telecommunications never applied for or received a loan from Capital Management Services.[255] According to Smith, the first time that he ever heard that D&L Telecommunications may have received a loan from CMS was a month or two before Smith's appearance before the grand jury on January 24, 1995 when an investigator showed him the loan documents.[256]

Smith testified that he never gave Marks permission to act on behalf of the corporation in getting such a loan in the corporation's name from Capital Management Services. Don Smith testified that he was not aware of the promissory note, Tucker's letter, or associated documents submitted to David Hale, and specifically said he never discussed this with Marks or Tucker.[257] Smith testified that D&L was not beginning to do business in Arkansas as represented in the letter written by Tucker.[258]

Bill Marks stated that he never knew until after he was indicted that the loan was

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[252] Id. at 6.

[253] Id. at 8-9.

[254] Id. at 9.

[255] Id. at 10.

[256] Id.

[257] Id. at 21-22.

[258] Id. at 26.

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taken out in the name of D&L.[259] Marks said that the first three paragraphs of the 4-paragraph letter written by Tucker to CMS were false. He said that D&L was not planning on doing any cable construction in Arkansas at that time.[260]

Meredith sold its PCS stock to Tucker and the note was endorsed to him for $3.3 million and to Marks for $4.6 million.[261] On the same date, in accordance with the bank's loan agreement, Tucker and Marks merged PCS into CMI, transferring all of the PCS stock and the income note to CMI.[262] After the merger, Tucker and Marks each owned fifty percent of CMI.[263] Marks was CMI's president and Tucker was its secretary.[264]

One of the documents Tucker had submitted to the bank in support of his financing request was a Debt Placement Memorandum which stated that the Plantation cable system owned by PCS had a present market value of over $10 million, and the market value could be

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[259] William J. Marks Sr. 8/20-11/4/97 Int. at 5.

[260] Id. at 6.

[261] Stock purchase agreement between Jim Guy Tucker and William Straw, Meridith Corporation Vice President-Finance (Mar. 1, 1987) (Doc. Nos. 199-00081477 through 485); Form of Endorsement to Jim Guy Tucker signed by William Straw, Meridith Corporation Vice President-Finance (undated) (Doc. No. 199-00081559).

[262] Letter from Jim Guy Tucker to Elizabeth Munnell, Edwards & Angell (May 13, 1987) (Doc. Nos. 287-00000162 through 171); see also Letter from Frost & Company to Fleet National Bank (June 9, 1987) (Doc. No. 85-00040069).

[263] Letter from Jim Guy Tucker to Elizabeth Munnell, Edwards & Angell (May 13, 1987) (Doc. Nos. 287-00000162 through 171); see also Letter from Frost & Company to Fleet National Bank (June 9, 1987) (Doc. No. 85-00040069).

[264] Demand Note (June 10, 1987) (Doc. Nos. 199-00219118 through 120); see also Security Agreement Between Jim Guy Tucker and William Marks and National Fleet Bank (June 10, 1987) (Doc. Nos. 199-00219105 through 117).

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increased to $12 million or more in the next year.[265] In August 1987, after several months of discussions with Marks, American Cable Systems ("ACS") offered to buy the Plantation cable system from CMI for $15 million -- fifty percent more than the valuation Tucker had placed on Plantation less than three months earlier.[266] A week later, Tucker wrote to a national accounting firm in Dallas, Texas, stating that they were contemplating a sale of Plantation's assets for $15 million and inquiring as to the tax consequences.[267] On or about September 25, 1987, ACS and Marks, on behalf of CMI, signed a purchase agreement for Plantation at a total price of $14.75 million: $12.75 million, plus $1 million each in non-competition payments to Tucker and Marks.[268]

On October 9, 1987, the accounting firm which Tucker had retained informed Tucker, through his accounting firm, that the tax basis of the Plantation system's assets was approximately $1.75 million, and so the gain on the sale of the system for $15 million would be more than $13 million.[269] On November 18, 1987, the Dallas accounting firm notified Tucker

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[265] Letter from Jim Guy Tucker to Elizabeth Munnell, Edwards & Angell (May 13, 1987) (Doc. Nos. 287-0000174 through 176); Debt Placement Memorandum Prepared by Waller Capital Corporation (undated) (Doc. Nos. 287-00000311 through 427).

[266] Facsimile Cover Sheet from Representative Mike Wilson (D. Ark.) to Tom Walsh, Vice President of ACF, (Aug. 25, 1987) with letter from John Chappel, Senior Vice President of ACF to William Marks, President of CMS, (Aug. 24, 1987) (Doc. Nos. 284-00000396 through 99).

[267] Memo from Jim Guy Tucker to Richard Jans, Mitchell, Williams, Selig & Tucker attorney, and John Furst, Tax Partner and Regional Tax Director of Coopers & Lybrand, (Aug. 31, 1987) (Doc. No. 445-00000128).

[268] Agreement of Purchase and Sale of Assets between Sattech and Cablevision Management (effective date Sept. 25, 1997) (Doc. Nos. GJ-00000197 through 229).

[269] Facsimile cover sheet and handwritten calculation from Richard Hutchins, Tax Dept. Supervisor at Coopers & Lybrand, to Mike Robinson, Frost & Co. (Oct. 9, 1987) (Doc. Nos. 85-00014694 through 97).

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that a corrected calculation showed Plantation's basis to be only $1.26 million, so the gain subject to corporate tax would have been even greater.[270] On that gain, the corporation would have owed income taxes of approximately $4 million.[271] Of course, when those proceeds were distributed to the individual shareholders, there would have been additional personal tax liability.

In early September 1987, Tucker and Marks met with a representative of another cable television company regarding the sale of additional assets of CMI. The representative of that company was advised by Tucker and Marks about the pending offer to sell one of their cable systems for $15 million. According to a contemporaneous memorandum prepared by this person:

> Tucker and Marks are in negotiations on another complicated deal to sell their system in Plantation, Florida to American Cablevision. They have all kinds of tax problems because Plantation is in a corporation and, according to them, of the $15 million purchase price, they are making a profit of $13 million. They do not want to pay a tax of $4.0 million.[272]

In October 1987, Tucker, Haley, and Marks initiated their scheme to defraud the IRS. The scheme included a series of sham transactions to avoid corporate and other taxes the law then required be paid. Tucker, Haley, and Marks fabricated a rescission of the PCS - CMI merger, and Haley arranged for the acquisition of an inactive corporation in Texas called Landowners Management Systems, Inc. ("LMS").[273] They then transferred the PCS assets into

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[270] Facsimile cover sheet and letter from Richard Hutchins, Tax Dept. Supervisor at Coopers & Lybrand, to Jim Guy Tucker (Nov. 18, 1987) (Doc. Nos. 445-00000277 through 80).

[271] Memorandum of Marc Nathanson Re: Acquisition -- Jim Guy Tucker's Cable TV Properties (Sept. 3, 1987) (Doc. No. 502-00001104).

[272] Id.

[273] See Rescission Agreement (Nov. 1997) (Doc. Nos. 199-00222032 through 55); Minutes of Special Joint Meeting of Shareholders and Board of Directors of Planned Cable Systems Corporation (Nov. 20, 1987) (Doc. Nos. 253-00002239 through 40).

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LMS, falsely representing that Tucker's only interest in that corporation was as a substantial secured creditor.[274]

Another company, Mikado Leasing, of which Haley had been the President from 1972 to 1987,[275] had been used up until that time solely to acquire and lease cars to members of Haley's law firm. Pleadings filed in the U.S. Bankruptcy Court represented that Mikado Leasing had purchased eighty-two percent of PCS's stock from Meredith. Those pleadings further falsely represented that Marks's wife, Donna, who was President of Mikado Leasing, was the owner of the other eighteen percent.[276] PCS was then ostensibly merged into LMS,[277] and LMS was immediately sent into a pre-packaged bankruptcy in the Northern District of Texas (In re: Landowners Management Systems, Inc., Tax Identification No. 75-2001914).[278]

Marks signed the bankruptcy pleadings as President of LMS,[279] and testified falsely in bankruptcy court that Tucker, who was present, was only a secured creditor of LMS (based on

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[274] General Conveyance, Assignment, and Transfer of Planned Cable Systems Corporation to Landowners Management System, Inc. (Nov. 24, 1987) (Doc. Nos. 253-00002106 through 107).

[275] Corporate Franchise Tax Report (May 1, 1987) (Doc. Nos. 413-00000068 through 89).

[276] Information of Initial Debtor Interview (Dec. 14, 1987) (Doc. No. 253-00002464); Corporate Resolution signed by William and Donna Marks (undated memorializing a resolution of Nov. 20, 1987) (Doc. No. 253-00002317).

[277] Agreement of Merger of Planned Cable Systems into Landowners Management System, Inc. (Nov. 24, 1987) (Doc. Nos. 253-00002287 through 92).

[278] Certified Copy of United States Bankruptcy Court Case No. 787-70392, Debtor: Landowners Management System, Inc. (N.D. Tex.) (filed Nov. 30, 1987) (Doc. Nos. MG-00000001 through 310).

[279] Original Petition Under Chapter 11 at 2, United States Bankruptcy Court Case No. 787-70392, Debtor: Landowners Management System, Inc. (N.D. Tex. (filed Nov. 27, 1987) (Doc. No. MG-00000301).

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the recreated note).[280] The reorganization plan presented to the bankruptcy court provided that Tucker would be given Plantation's assets in satisfaction of his claim, and that CMI would be given certain other cable television systems in Texas (previously owned by PCS) in satisfaction of a fabricated $1.15 million unsecured claim.

The Bankruptcy Court was misled to believe that Meredith had sold its eighty-two percent of PCS stock to Mikado for one dollar, when Tucker and Marks both knew that it had been sold with the income note to Tucker (as part of his fifty-fifty relationship with Marks) for $6 million. The Bankruptcy Court also was misled to believe that the fair market value of Plantation was no more than $8.85 million, when Tucker, Marks, and Haley knew that ACS had signed a contract to purchase it for $14.75 million. Further, the Bankruptcy Court was misled to believe that Tucker and Marks had engaged in arms-length negotiations to reach the reorganization plan, when they both knew they were 50-50 partners in a cable television business.

The Bankruptcy Court was also not told about the bank's security interest in the assets put in the name of LMS. The bank, in turn, was not told of the purported rescission of the PCS-CMI merger, of the PCS-LMS merger, or of the LMS bankruptcy.[281] Tucker and Marks then changed the purchase agreement with ACS to reflect a redistribution of the $14.75 million sale price: $11.75 million for Plantation's assets and $3 million in non-competition payments.[282]

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[280] Secured Creditors, United States Bankruptcy Court Case No. 787-70392, Debtor: Landowners Management System, Inc. (N.D. Tex.) (as of Nov. 30, 1987) (Doc. No. MG-00000295).

[281] See Tr. 25-27, United States v. Marks, No. LR-CR-95-117 (E.D. Ark. Aug. 28, 1997).

[282] See Letter from Jim Guy Tucker to Tom Walsh, Vice President of ACS (Dec. 9, 1987) (Doc. Nos. 284-00001653 through 54); Agreement of Purchase and Sale of Assets between Jim Guy Tucker and William Marks (effective Date Dec. 28, 1987) (Doc. Nos. 199-

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One effect of the fraudulent bankruptcy proceeding was that the tax basis in the Plantation system assets could be falsely represented as approximately $7.28 million. This fraudulently-inflated basis substantially reduced the taxable gain from the sale to ACS, which in turn reduced the amount of income tax owed by Tucker on the reported sale. "Rescinding" the PCS-CMI merger and the sham bankruptcy also assisted in avoiding a corporate level tax on the sale of corporate assets to ACS and other subsequent purchasers of PCS's assets.[283]

The Bankruptcy Court approved the reorganization plan in December 1987.[284] The sale of Plantation to ACS occurred in January 1988.[285] No tax return for PCS or LMS reported income from the gain on the sale of Plantation. No corporate income tax was paid by CMI on the gain from the sale.[286] Using the falsified tax basis, Tucker reported an individual gain of approximately $4.46 million on the sale of Plantation on his 1988 individual income tax return, and initially reported income tax paid of over $1 million.[287] That amount was approximately $3 million less than Tucker's accountants told him initially the corporation would owe.[288]

00214656 through 88).

[283] See Tr. at 42-43, 45-46, United States v. Tucker et al., No. LR-CR-95-117 (E.D. Ark. Aug. 28, 1997).

[284] Order Approving Disclosure Statement and Confirming Plan of Reorganization, United States Bankruptcy Court Case No. 787-70392, Debtor: Landowners Management System, Inc. (No. Dist. Texas Dec. 18, 1987) (Doc. Nos. MG-00000098 through 102).

[285] Closing Statement (Jan. 4, 1988) (Doc. No. 284-00003478).

[286] See Tr. at 27-29, United States v. Tucker et al., No. LR-CR-95-117 (E.D. Ark. Aug. 28, 1997).

[287] See James G. and Betty A. Tucker 1988 Federal Income Tax Form 1040.

[288] United States v. Tucker, 217 F.3d 962 (8th Cir. 2000).

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B. United States v. Jim Guy Tucker, John Haley & William Marks.[289]

1. Indictment, Dismissal, and Reversal on Appeal.

On June 7, 1995, a federal grand jury for the Eastern District of Arkansas returned an indictment charging then-Governor Tucker, Marks, and Haley with conspiracy to impede the functions of the IRS (commonly referred to as a "Klein Conspiracy"). The indictment also charged Tucker and Marks in two counts with conspiracy and false statements relating to a $300,000 loan from David Hale's CMS to D&L Telecommunications. The case was initially assigned to United States District Judge Henry Woods.

The defendants filed a motion to dismiss the case, claiming that the Independent Counsel lacked jurisdiction to prosecute them. On September 5, 1995, Judge Woods granted the motion and dismissed the indictment.[290] The government appealed and, in March 1996, the Eighth Circuit reversed Judge Woods and reinstated the indictment.[291] The defendants petitioned the United States Supreme Court for certiorari, which was denied.[292] The court of appeals also directed that the case be reassigned, and on remand it was assigned to Chief Judge Stephen Reasoner.[293] The case suffered further delays due to Tucker's health problems, and he underwent

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[289] United States v. Tucker et al., No. LR-CR-95-117 (E.D. Ark.).

[290] Tucker moved to discharge the grand jury before he was indicted, claiming that the Independent Counsel lacked jurisdiction. Petitioner Jim Guy Tucker's Motion to Discharge Grand Jury, In re: Special Grand Jury, No. GJ-94-75 (Mar. 30, 1995 E.D. Ark.). That motion was denied and Tucker appealed. Shortly after Judge Woods dismissed the case, the United States Court of Appeals for the Eighth Circuit dismissed the earlier appeal as moot. Judgment dated Oct. 30, 1995.

[291] United States v. Tucker, 78 F.3d 1313, 1315 (8th Cir. 1996).

[292] Marks v. United States, 519 U.S. 820 (1996).

[293] Tucker, 78 F.3d at 1323.

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a liver transplant on December 25, 1996.

All three defendants eventually pleaded guilty.[294] Marks pleaded guilty in August 1997 to conspiring to defraud the United States and agreed to cooperate with the United States. Marks was prepared to testify as a government witness against both Jim Guy Tucker and John Haley at the trial scheduled to begin on February 23, 1998.

Tucker pleaded guilty to one felony charge, conspiring "to defraud the United States for the purpose of impeding, impairing, obstructing, and defeating the lawful government functions of the Internal Revenue Service of the Treasury Department in the ascertainment, computation, assessment, and collection of the revenue: to wit, income taxes."[295]

2. Marks's Guilty Plea and Sentence.

On August 28, 1997, Marks pleaded guilty to one felony count of conspiracy to defraud the IRS in violation of 18 U.S.C. § 371. Marks agreed to cooperate and testify against his co-defendants. Marks was extensively debriefed by Independent Counsel attorneys and agents and provided information confirming the facts and circumstances set forth in the indictment originally filed against him, Tucker, and Haley.[296] He confirmed the false information which had been submitted to CMS and the SBA concerning the D&L Telecommunications loan.[297] Marks stated that after ACS had offered to buy the Plantation

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[294] Plea Agreement as to Jim Guy Tucker, United States v. Tucker, No. LR-CR-95-117 (E. D. Ark. Feb. 20, 1998); Plea Agreement as to William J. Marks Sr., United States v. Tucker, No. LR-CR-95-117 (E. D. Ark. Aug. 28, 1997); Plea Agreement as to John Haley, United States v. Haley, No. LR-CR-98-29 (E. D. Ark. Feb. 20, 1998).

[295] United States. v. Jim Guy Tucker, William J. Marks Sr., and John H. Haley Indictment at 18.

[296] William J. Marks Sr. 8/20-11/4/97 Int. at 1-31.

[297] Id. at 5-7.

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system for $15 million, Tucker seemed obsessed about finding a way to eliminate the taxes on the sale of the Plantation system.[298] Marks said that the entire LMS bankruptcy was a "fantasy" based on the fiction that Tucker was angry and was going to foreclose on Marks.[299] By the time the bankruptcy was filed, Marks knew from discussions with both Haley and Tucker that the only reason for the bankruptcy was to save taxes for Tucker and Marks.[300] According to Marks, both Tucker and Haley told him that they filed a bankruptcy in Fort Worth, Texas to avoid publicity so that none of their customers would find out about it.[301] Marks knew that a number of the statements made in the bankruptcy pleadings were not true, and Marks admitted lying in his testimony in the bankruptcy proceeding in Texas.[302] On May 18, 1998, Marks was sentenced to a four-year term of probation, ordered to perform community service, and ordered to pay $1 million in restitution to the United States.

3. Haley's Guilty Plea and Sentence.

On February 20, 1998, Haley pleaded guilty to one misdemeanor count of aiding and abetting the willful failure to supply information to the IRS, in violation of 26 U.S.C. § 7203. On August 20, 1998, he was sentenced to three years probation with a condition that he perform eight hours of community service per week for three years. He was fined $30,000 and ordered to pay an additional $40,000 in restitution.

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[298] Id. at 16.

[299] Id. at 16, 22.

[300] Id. at 17.

[301] Id.

[302] Id. at 17-19.

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4. Tucker's Guilty Plea and Sentence.

On February 20, 1998, Tucker pleaded guilty to one felony count of conspiracy to defraud the IRS in violation of 18 U.S.C. § 371. He agreed to cooperate with the Office of the Independent Counsel. Tucker's plea agreement provided that while he would receive no imprisonment, he would be sentenced to probation for a term to be determined by the court, and a fine as determined by the court. It also provided that he would pay restitution based on the loss sustained by the United States. The agreement further stated that Tucker would not be liable for the full amount of tax loss -- which would include the tax benefit to his co-conspirators -- but only for his appropriate share of the loss, with total restitution not to exceed the tax benefit gained by him.[303]

Before his sentencing hearing, Tucker moved the district court to rule that certain changes in the tax code -- all subsequent to his fraud scheme -- reduced his tax liability to zero. That is, Tucker argued that although he had intended, with his co-conspirators, to defraud the United States, if the new law applied to the relevant events they would have owed no actual tax. The district court rejected this argument. All of the changes to the tax code upon which Tucker relied, in the government's view, did not apply to his situation: they all applied only to corporations that chose S designation after December 31, 1986. Since CMI chose that designation in May 1985 the changes to the code were simply irrelevant. The district court rejected Tucker's argument and ordered him to pay $1 million in restitution, the same amount Marks was ordered to pay -- less than one-third of the more than $3.5 million of corporate tax

[303] Plea Agreement, United States v. Tucker et al., No. LR-CR-95-117 (E.D. Ark. Feb. 20, 1998).

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owed.[304] Judge Reasoner also sentenced Tucker to serve four years of probation with four hours of community service each week and to pay a $6,000 fine. Tucker appealed this sentence.

5. Reversal on Appeal.

On July 3, 2000, the Eighth Circuit reversed the restitution order and remanded for resentencing. The court of appeals concluded that while the relevant statute seemed to preclude Tucker's claim that he was entitled to the benefits of the new law, the IRS had in private letter rulings and regulations apparently interpreted the statute in that way. The court of appeals decided, therefore, that since the United States had introduced no evidence as to tax loss at the sentencing hearing, and the district court had relied only upon the Pre-Sentence Report and the cross-examination of Tucker's witnesses, it had no alternative but to reverse and remand for resentencing.[305]

Judge Reasoner set the resentencing hearing for December 14, 2000. The Independent Counsel was prepared to introduce testimony that the "old law" applied and that the actual tax loss was as previously testified to at Marks's sentencing hearing. In the alternative, if it were determined that the "new law" applies, then the Independent Counsel was prepared to introduce evidence that substantial tax would still be owed if the correct "fair market value" of the plantation System were utilized. For example, under the "new law" if a fair market value of $11.75 million were used (the sales price ultimately paid), CMI would owe approximately

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[304] Presentence Investigation Report at 17, United States v. Tucker, No. 95-117 (E.D. Ark. Apr. 9, 1998). Governor Tucker's presentence report concluded that the income tax liability evaded by Tucker's scheme as $3,562,257. The report also noted that, had interest and penalties been assessed, the tax loss would have been $4,876,154 as of the date of Tucker's guilty plea.

[305] Tucker, 217 F.3d at 961-62.

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$1.698 million in additional taxes, Tucker's half being approximately $846,189.[306]

On December 1, 2000, at a hearing on several pre-sentencing motions, Judge Reasoner stated, as he had at the conclusion of the conclusion of the original sentencing hearing in may 1999, that if there was a civil settlement between the IRS and Governor Tucker, Tucker could move to amend the amount of restitution ordered in the criminal case.[307] The district court ruled that it would defer the issue of any restitution to be ordered paid by Tucker pending resolution of the civil tax liability with the Civil Examination Division of the IRS.[308]

VII. PROSECUTIONS INVOLVING THE PERRY COUNTY BANK.

During regulatory Independent Counsel Fiske's review of information relative to whether Madison Guaranty funds were diverted to Whitewater Development or to campaigns for public office conducted by President Clinton, evidence was developed of possible crimes relating to transactions involving the 1990 Clinton gubernatorial campaign account at the Perry County Bank in Perryville, Arkansas.

Independent Counsel Fiske's investigation involved the alleged failure to file Currency Transaction Reports ("CTRs") for two cash withdrawals made by the Clinton gubernatorial campaign in 1990. The first cash withdrawal, in the amount of $30,000, was made on May 25, 1990 right before the Democratic primary election. The second, in the amount of $22,500, was made on November 2, 1990 shortly before the general election. As of August 5, 1994, Fiske's office was investigating whether the campaign and Perry County Bank officials conspired not to

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[306] Response of the United States to Motion of Defendant Tucker at 10-11 (filed Nov. 8, 2000).

[307] Hearing Before The Honorable Stephen M. Reasoner, United States v. Tucker, No. 4:95CR00117-01SMR at 7-8 (Dec. 1, 2000).

[308] Id. at 27-29.

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file the required CTRs and further conspired to conceal one of the withdrawals. Fiske was also investigating whether the withdrawals, which occurred four days before the 1990 primary and general elections, respectively, were used for the purpose of unlawfully providing cash to influence the 1990 primary and general elections.[309]

A. Introduction.

Perry County Bank ("PCB"), was a state chartered bank located in Perryville, Arkansas, a town of approximately 1,100 people, approximately 45 minutes west of downtown Little Rock. As an FDIC insured institution, it was required to complete a Currency Transaction Report ("CTR"), IRS Form 4789, notifying the IRS in writing of each currency transaction in excess of $10,000, including each withdrawal of currency in excess of $10,000. The FDIC was empowered to periodically inspect PCB to ensure compliance with various regulatory requirements, including compliance with the requirements related to the completion of CTRs.

Attorney Herby Branscum Jr. and Certified Public Accountant Robert M. Hill, a former IRS Revenue Agent, were directors of PCB and controlling shareholders of PCB's parent corporation, Perry County Bancshares, Inc., a bank holding company. PCB employed Neal T. Ainley as President of PCB from approximately June 1989 to March 1994. In their dual capacities, Branscum and Hill functioned as Ainley's superiors.

In 1990, then-Governor Clinton was running for re-election as Arkansas governor. On March 9, 1990, the Clinton for Governor campaign opened an account at PCB, listing Bruce Lindsey and Gloria Cabe as the authorized signatories for the account.[310] Then-Governor and

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[309] Fiske Report, supra note 206, at 50.

[310] The Perry County Bank Account Application (Mar. 9, 1990) (Doc. No. 226-00000353).

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Mrs. Clinton personally borrowed money from PCB on five occasions in 1990 for the benefit of the Clinton for Governor campaign.[311] The proceeds of those loans were deposited in the campaign's account.

B. Alleged Failure to File Currency Transaction Reports.

The Clinton gubernatorial campaign made at least two large cash withdrawals for which the evidence established PCB failed to file the appropriate documents.[312] On May 25, 1990, the Clinton for Governor campaign withdrew $30,000 in currency from its account at the Perry County Bank.[313] On November 2, 1990, the Clinton for Governor campaign withdrew an additional $22,500 in cash from the same account.[314] The IRS did not receive a CTR from the PCB for either transaction.

1. Multiple Checks Were Used Allegedly to Avoid the Reporting Requirements of 31 U.S.C. § 5324(a) (1) in May 1990.

The investigation found evidence that on May 25, 1990, four days before the Democratic primary election, Clinton's gubernatorial campaign had contact with Branscum. On May 25, 1990, telephone records reflect that telephone calls were made from the Clinton campaign office

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[311] Promissory Note to PCB signed by Hillary Rodham Clinton and Bill Clinton for $100,000 (May 16, 1990) (Doc. No. 226-00000004); Promissory Note to PCB signed by Hillary Rodham Clinton and Bill Clinton for $60,000 (May 23, 1990) (Doc. No. 226-00000037); Promissory Note to PCB signed by Bill Clinton and Hillary Rodham Clinton for $60,000 (June 26, 1990) (Doc. No. 226-00000031); Promissory Note to PCB signed by Bill Clinton and H R Clinton for $75,000 (Oct. 29, 1990) (Doc. No. 226-00000022); Promissory Note to PCB signed by Bill Clinton and Hillary Rodham Clinton for $50,000 (Nov. 5, 1990) (Doc. No. 226-00000014).

[312] These withdrawals were used to provide cash payments for "get out the vote" efforts. Willis Memorandum; Tr. at 18-21, 179, 290, United States v. Branscum, No. LR-CR-96-49 (E.D. Ark. July 16-17, 1996) (statement of Bruce Lindsey).

[313] Ainley 7/5/94 Fiske Int. at 2-3.

[314] Ainley 6/21/94 Fiske Int. at 4; Ainley 7/5/94 Fiske Int. at 1.

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telephone number to Branscum's residence at 7:44 a.m.[315] and Branscum's office at 8:55 and 8:58 a.m.[316] Between 9:00 a.m. and 9:20 a.m., telephone records reflect that calls were placed from Branscum's office to the Clinton for Governor phone number at least three times.[317] Testimony and other statements suggested that these calls generally related to the $30,000 cash withdrawal because, according to Ainley, the authorization of either Branscum, Hill, or both would have been needed to approve a $30,000 cash transaction.[318]

According to Ainley, Lindsey called him to coordinate the $30,000 cash withdrawal. [319] Telephone records reflect a 9:30 a.m. PCB call to the Wright, Lindsey, Jennings law firm, where Lindsey was a partner.[320] Ainley determined that PCB lacked adequate cash to provide the $30,000 in cash to Lindsey and, at 9:48 a.m., called another bank in a nearby town to obtain additional currency.[321] PCB issued a Cashier's Check to that bank for $23,000 and Tracy Hill Price, an employee of PCB and daughter of Robert Hill, went to the other bank to obtain $23,000 in cash.[322]

The evidence established that Lindsey drove to Perryville to pick up the cash and

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[315] Clinton for Governor Campaign Telephone Records (June 21, 1990) (Doc. No. 285-00072466).

[316] Id.

[317] Perco Telephone Co. Record (May 1990) (Doc. No. 419-00000915).

[318] Ainley 7/5/94 Fiske Int. at 3.

[319] Id.

[320] Perco Telephone Co. Record (May 1990) (Doc. No. 419-00001088).

[321] Ainley 7/5/94 Fiske Int. at 3-4.

[322] Id.; Perco Telephone Co. Record (May 1990) (Doc. No. 419-00001088).

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presented four sequentially numbered checks, each for $7,500, dated May 25, 1990, signed by Lindsey and campaign manager Gloria Cabe, endorsed by Lindsey (as "treasurer, Clinton for Governor Committee"), and payable to several variations on the name of Clinton's campaign committee.[323] Although the total transaction was far in excess of $10,000, Ainley prepared no CTR.[324]

2. PCB Failed to Report the November 1990 Currency Transaction.

On November 2, 1990, Lindsey again called Ainley and requested a withdrawal of $22,500 in cash from the campaign account.[325] Ainley testified that Lindsey also asked if it were possible to avoid reporting this cash transaction and Ainley responded that such reporting was mandatory.[326]

On November 2, 1990, Cabe asked campaign volunteer Glenda Cooper to go to PCB to pick up a package.[327] Cooper received $22,500 in cash at PCB, indicating receipt of the money by signing the back of a debit slip in that amount drawn on the Clinton for Governor campaign

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[323] Ainley 7/5/94 Fiske Int. at 4; Tr. at 52-54, United States v. Branscum et al, (June 27, 1996) (testimony of Neal Ainley); see Check No. 00326 from the account of Clinton for Governor payable to "Committee to Re-elect Governor Clinton" for $7500.00 (May 25, 1990), Check No. 00327 from the account of Clinton for Governor to "Clinton for Governor Campaign Committee" for $7,500.00 (May 25, 1990), Check No. 00328 from the account of Clinton for Governor payable to "Clinton for Governor Committee" for $7,500.00 (May 25, 1990), and Check No. 00329 from the account of Clinton for Governor payable to "Clinton for Governor Committee" for $7,500.00 (May 25, 1990).

[324] Ainley 7/5/94 Fiske Int. at 4.

[325] Id. at 1.

[326] See Tr. at 66, United States v. Branscum et al., (June 27, 1996) (testimony of Neal Ainley); Ainley 7/5/94 Fiske Int. at 1; Ainley 6/21/94 Fiske Int. at 4.

[327] Cooper 2/8/95 GJ at 5-6, 11.

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account.[328] A Currency Transaction Report was filled out reflecting that the money was disbursed to Glenda Cooper, and listing her home address and driver's license number.[329] Cooper took the money back to Little Rock, gave it to Cabe, and asked Cabe not to do that to her again.[330] According to Cooper, later that afternoon Cabe said that Bruce Lindsey was not happy with the way that happened, and that if she had any trouble with the IRS to let him know because he was taking care of the paper work.[331]

Later that day, according to Ainley, Hill called Ainley and asked if there were any way to avoid filing a report on this transaction.[332] Once again, Ainley responded that the transaction had to be reported.[333] Ainley also asked Marty Satterfield, PCB Vice-President, if there were any way to keep the transaction from being reported, and Satterfield said no.[334] Still later that same day, Hill telephoned Ainley and asked if there were any way Ainley could intercept the CTR that

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[328] Id. at 11. PCB Debit memo for $22,500 on the Clinton for Governor bank account. (Nov. 2, 1990) (Little Rock GJ Exh. 450). The PCB Debit memo read: "Disbursed funds as requested by Bruce Lindsey per telephone call to Neal Ainley. Funds received by (acct 11-412-9) Glenda Cooper at 11:08 a.m."

[329] Cooper 2/8/95 GJ at 12-13. Currency Transaction Report of PCB reflecting a $22,500 cash disbursement to Glenda Cooper (Nov. 2, 1990) (Little Rock GJ Exh. 255).

[330] Cooper 2/8/95 GJ at 16. Cooper told Independent Counsel investigators in an interview that she did not want to ever be accused of being a bag lady or bag woman. When referred to that prior characterization during her grand jury appearance, she responded, "Yeah. Felt kind of sleazy." Id.

[331] Id. at 18. Cabe explained to Cooper that if you are involved in a cash transaction over $10,000, then that had to be reported to the IRS. Id.

[332] Ainley 7/5/94 Fiske Int. at 1.

[333] Id.

[334] Id.

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Satterfield had prepared.[335] Ainley again said no, because Satterfield had handled the transaction.[336] According to Ainley, in spite of his prior refusals, when it became clear that neither Lindsey nor Hill wanted the CTR filed, Ainley went to the mailroom, found the envelope containing the CTR, and removed the CTR from the mailroom.[337]

3. Ainley's Admissions and Prosecution.

On June 21, 1994, agents assigned to Fiske's office interviewed Ainley, the former PCB president.[338] He admitted to having pulled a CTR for the November 1990 $22,500 withdrawal, advising the agents of Lindsey's role.[339] In a second interview on July 5, 1994, Ainley also told the agents of his having not filed the May 1990 CTR for the $30,000 withdrawal.[340] Again, Ainley described Lindsey's role and also that of both Branscum and Hill.[341] This Office also questioned Lindsey, Branscum, and Hill.[342] All three denied having done anything unlawful, and denied knowledge of PCB's failure to file CTRs.

On February 28, 1995, a federal grand jury indicted Ainley on charges relating to the two

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[335] Id. at 1-2.

[336] Id. at 2.

[337] See Tr. at 67, 70-72, United States v. Branscum et al., (June 27, 1996) (testimony of Neal Ainley).

[338] Ainley 6/21/94 Fiske Int. at 1.

[339] Id. at 6.

[340] Id. at 2.

[341] Id. at 1-3.

[342] Lindsey 10/25/94 GJ at 144-46; Branscum 7/6/94 Int. at 2-3; Hill 7/6/94 Int. at 3.

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failures to file CTRs and conspiring to do the same.[343] On May 2, 1995, pursuant to a plea agreement, Ainley pleaded guilty to two misdemeanor violations of 26 U.S.C. § 7207, willfully delivering and disclosing to the Secretary of the Treasury documents known to be fraudulent or false as to a material matter.[344] The charges were based upon Ainley's providing a false document to FDIC bank examiners who were reviewing PCB compliance with 31 C.F.R. § 103.[345] On February 20, 1991, Ainley had completed FDIC Form 6410/01, answering "yes" to the question on the form whether PCB filed a CTR for each transaction involving currency in excess of $10,000.[346] Specifically, the document claimed that PCB had completed a CTR for each deposit, withdrawal, transfer, or exchange of currency of more than $10,000 for customers that have not been granted an exemption, when Ainley knew that no CTR had been filed for either the May 25, 1990 or November 2, 1990 cash withdrawals by the Clinton gubernatorial campaign.

In connection with Ainley's guilty plea, he agreed to cooperate with the government.[347] In addition to the information already provided to Fiske concerning the CTR violations, Ainley for the first time in May 1995 told of a scheme involving Branscum, Hill, and himself to use PCB funds to make contributions to the 1990 Clinton for Governor campaign and the 1991 Clinton presidential exploratory campaign. Ainley advised investigators that in 1990 he was

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[343] Indictment, United States v. Ainley, No. LR-CR-95-43 (E.D. Ark. Feb. 28, 1995).

[344] Plea Agreement, United States v. Ainley, No. LR-CR-95-43 (E.D. Ark. May 2, 1995).

[345] Id.

[346] Federal Deposit Insurance Corporation Form 6410/01 at 4 (Feb. 20, 1991).

[347] Plea Agreement at 6, United States v. Ainley, No. LR-CR-9545 (E.D. Ark. May 2, 1995).

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instructed to contribute $1,000 to the Clinton for gubernatorial campaign and to reimburse himself by having PCB issue a check to him in the amount of $1,000. He also advised investigators that he caused PCB checks to be issued to Branscum and Hill at the same time. Under Arkansas law, individuals could contribute up to $1,500 per election.[348] The Independent Counsel caused grand jury subpoenas to issue to PCB, and later to Branscum, Hill, and their professional associations to produce records.

This case was substantially delayed by the failure of those involved to cooperate. Then Chief United States District Court Judge Stephen Reasoner, who supervised the grand jury, ultimately held Hill, Robert M. Hill, P.A., Branscum, Herby Branscum Jr. P.A., and PCB in contempt for refusing to comply with properly issued subpoenas duces tecum.[349] They contended that the Independent Counsel was proceeding outside his jurisdiction.[350] The court imposed a fine of $5,000 per day on PCB, $1,000 per day on Branscum, and $1,000 per day on Hill until they complied with the subpoena.[351] Robert M. Hill, P.A., Branscum, and PCB eventually purged themselves of contempt by obeying the district court's order and responding to the subpoenas.[352] Branscum's association and Hill complied with the subpoenas only after the Eighth Circuit affirmed the contempt citation. The district court imposed total fines of $77,000

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[348] Ark. Code Ann. § 7-6-203(b) (1990).

[349] Order, United States v. Branscum et al., No. LR-CR-96-49 (E.D. Ark. Sept. 8, 1995).

[350] Id.; see also In re: Grand Jury Subpoenas Duces Tecum, 78 F.3d 1307 (8th Cir. 1996); In re: Grand Jury Subpoenas Duces Tecum, 85 F.3d 372 (8th Cir. 1996).

[351] Order, United States v. Branscum et al., No. LR-CR-96-49 (E.D. Ark. Sept. 8, 1995); see also In re: Grand Jury Subpoenas Duces Tecum, 78 F.3d 1307 (8th Cir. 1996); In re: Grand Jury Subpoenas Duces Tecum, 85 F.3d 372 (8th Cir. 1996).

[352] In re: Grand Jury Subpoenas, 78 F.3d at 1309.

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each against Hill in his individual capacity and Herby Branscum Jr. P.A.[353]

C. Evidence That Individuals Made Contributions to the Clinton for Governor Campaign in Violation of Campaign Contribution Regulations.

1. Branscum Gave Money to Others Who Then Made Campaign Contributions to Clinton's Campaigns.

On April 11, 1990, during the primary election season, Branscum wrote a check for $1,500 from his personal account dated April 7, 1990 to the Clinton campaign.[354] On April 30, 1990, Branscum wrote a check to his daughter, Beth Branscum, for $800.00.[355] Later that day, that check was deposited in her account and she wrote a check for $800.00 to Clinton for Governor.[356]

On May 22, 1990, Branscum wrote a check for $200.00 to his son, John C. Branscum.[357] On that same day, John Branscum deposited the check into his account,[358] and then wrote a check for $200.00 to the Clinton gubernatorial campaign.[359]

After the primary, Branscum continued to transfer money to others who then made

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[353] Order, United States v. Branscum et al., No. LR-CR-96-49 (E.D. Ark. Dec. 5, 1995).

[354] Check No. 1040 from the account of Herby Branscum Jr. payable to Bill Clinton Campaign for $1,500 (Apr. 7, 1980) (Doc. No. 1026-00000081).

[355] Check No. 9235 from of the account of Herby Branscum Jr. or Billie Jo Branscum payable to Beth Branscum for $800.00 (Apr. 30, 1990) (Doc. No. 1101-00000012).

[356] The Perry County Bank Deposit Slip for Elizabeth Ann Branscum for $800 (Apr. 30, 1990) (Doc. No. 1144-00000059).

[357] Check No. 1732 from the account of Herby Branscum Jr. PA payable to Chris Branscum for $200.00 (May 22, 1990) (Doc. No. 1102-00000008).

[358] The Perry County Bank Deposit Slip for John C. Branscum for $200.00 (May 24, 1990) (Doc. No. 1144-00000091).

[359] Check No. 8319 from the account of John C. Branscum made payable to Bill Clinton Campaign for $200 (May 22, 1990) (Doc. No. 1144-00000085).

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contributions to the Clinton gubernatorial campaign. Branscum also gave funds to his law office staff who then made contributions to the Clinton campaign. In June 1990, Branscum paid his secretaries, Paula Franklin and Debbie Halbrook, $600.00 each.[360] On June 12, Franklin contributed $250.00 to Clinton for Governor.[361] The next day June 13, Paula Franklin's husband and Debbie Halbrook, and her husband, Wes Halbrook, wrote checks for $250.00 each to Clinton for Governor.[362]

After the general election, Branscum continued to transfer money to others who then made contributions to the Clinton gubernatorial campaign. On December 13, 1990, Herby Branscum Jr. P.A. issued a check for $1,000.00 to his son, James Branscum, and issued another check for $500.00 to another son, John Branscum.[363] Later that day, James Branscum deposited the check into his PCB joint account and John Branscum deposited his check into his PCB account.[364] On December 17, 1990, James Branscum wrote check no. 256 for $500.00 and John

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[360] Check No. 4068 from the account of Herby Branscum Jr. PA payable to Debbie Halbrook for $600 (June 12, 1990) (Doc. No. 1189-00000035); Check No. 8320 from the account of Herby Branscum Jr. PA payable to Paula Franklin for $600 (June 12, 1990) (Doc. No. 1189-00000037).

[361] Check No. 4068 from the account of Gary D. or Paula J. Franklin payable to Bill Clinton Campaign for $250 (June 12, 1990) (Doc. No. 656-00000491).

[362] Check No. 1438 from the account of Wes or Debbie V. Halbrook payable to the Bill Clinton Campaign Headquarters for $250.00 (June 13, 1990) (Doc. No. 1187-00000001); Check No. 1439 from the account of Wes or Debbie V. Halbrook payable to the Bill Clinton Campaign Headquarters for $250.00 (June 13, 1990) (Doc. No. 1189-00000003); Check No. 4091 from the account of Gary D. or Paula J. Franklin payable to the Bill Clinton Campaign for $250.00 (June 13, 1990) (Doc. No. 656-00000493).

[363] These checks were actually drawn on Branscum's PCB business account, Herby Branscum Jr. P.A. Attorney at Law Account No. 0006-797-5 (Doc. Nos. 1144-00000039, 1144-00000041).

[364] The Perry County Bank Deposit Slip for James S. Branscum for $1000 (Dec. 13, 1990) (Doc. No. 1144-00000073).

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Branscum wrote check no. 1829 for $500.00, both payable to the Clinton gubernatorial campaign. Herby Branscum never admitted improperly funneling money through John Branscum, although he conceded that he put money in John Branscum's "account when I knew that he was giving campaign contributions. . . ."[365]

The next year Branscum also gave money to his employees who then made contributions to the Clinton presidential exploratory committee. On September 13, 1991, Branscum issued a check for $1,500.00 to Debbie Halbrook and a check for $1,200.00 to Paula Franklin.[366] On September 26, 1991, Mr. and Mrs. Halbrook each wrote checks for $250.00 to the Clinton presidential exploratory committee.[367] That same day, Mr. and Mrs. Franklin wrote a check for $250.00 to the Clinton presidential exploratory committee.[368]

2. Hill Gave Money to Others Who Then Made Campaign Contributions to Clinton's Campaigns.

Hill likewise gave money to family members who then contributed to the Clinton 1990 gubernatorial campaign. In the spring of 1990, Hill wrote a check while his wife, Shirley Hill

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[365] See Tr. at 650, United States v. Branscum et al., (E.D. Ark. July 15, 1996) (testimony of Herby Branscum Jr.).

[366] Check No. 9296 from the account of Herby Branscum Jr. PA payable to Debbie Halbrook for $1500 (Sept. 13, 1991) (Doc. No. 1189-00000044); Check No. 9297 from the account of Herby Branscum Jr. PA payable to Paula Franklin for $1200 (Sept. 13, 1991) (Doc. No. 1189-00000046).

[367] Check No. 2020 from the account of Wes or Debbie V. Halbrook payable to the Clinton Exploratory Committee for $250 (Sept. 26, 1991) (Doc. No. 1187-00000005); Check No. 2021 from the account of Wes Halbrook payable to the Clinton Exploratory Committee for $250 (Sept. 26, 1991) (Doc. No. 1187-00000007).

[368] Check No. 4256 from the account of Gary D. or Paula J. Franklin payable to the Clinton Exploratory Committee for $250 (Sept. 26, 1991) (Doc. No. 1168-00000021); Check No. 4258 from the account of Gary D. or Paula J. Franklin payable to the Clinton Exploratory Committee for $250 (Sept. 26, 1991) (Doc. No. 1168-00000023).

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wrote a check, both for $1,500, to Clinton for Governor.[369] On October 29, 1990, Hill wrote a check for $250.00 to Clinton for Governor.[370] That same day, Hill wrote a check for $250.00 to his daughter, Tracy Hill.[371] Later that same day, Tracy Hill deposited the $250.00 check from Hill and wrote a check for $250.00 to Clinton for Governor.[372] On December 17, 1990, Hill signed a check for $1,000.00 from his business account to his wife.[373] Later that day Shirley Hill deposited the $1,000.00 check into her PCB account, and wrote a check for $1,000.00 to the Clinton gubernatorial campaign.[374]

Hill also gave money to family members and employees who then contributed to the Clinton presidential exploratory committee. On September 30, 1991, Hill signed a check for $250.00 to Mrs. Woodrow Hill, who immediately deposited the check into her PCB account, and also wrote $550.00 checks on Hill's business account to his daughters, Kayla Hill and Tracy

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[369] Check No. 3213 from the account of Shirley Hill payable to the Bill Clinton Campaign for $1500 (Apr. 27, 1990) (Doc. No. 1144-00000127); Check No. (illegible) from the account of Robert M. Hill payable to the Bill Clinton Campaign for $1500 (May 11, 1990) (Doc. No. 1153-00000471).

[370] Check No. 0979 from the account of Robert M. Hill payable to Clinton for Governor for $250 (Oct. 29, 1990) (Doc. No. 1025-00000016).

[371] Check No. 0975 from the account of Robert M. Hill payable to Tracy Hill for $250 (Oct. 29, 1990) (Doc. No. 1153-00000207).

[372] The Perry County Bank Deposit slip for Tracy Hill for $250 (Oct. 29, 1990) (Doc. No. 1153-00000206); Check No. 1030 from the account of Tracy Hill payable to Clinton for Governor for $250 (Oct. 29, 1990) (Doc. No. 656-00001259).

[373] Check No. (Starter Check) from the account of Robert M. Hill payable to Shirley Hill for $1000 (Dec. 17, 1990) (Doc. No. 1103-00000006).

[374] Check No. 3678 from the account of Shirley Hill payable to Clinton for Governor for $1000 (Dec. 11, 1990) (Doc. No. 1144-00000125); The Perry County Bank Deposit Slip for Shirley Hill for $1000 (Dec 17, 1990) (Doc. No. 1144-00000135).

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Hill.[375] Later that day, Tracy and Kayla deposited the checks into their respective PCB accounts.[376] The following day, Mrs. Woodrow Hill wrote a check for $250.00, while Kayla and Tracy Hill also wrote $250.00 checks, all to the Clinton presidential exploratory committee.[377]

3. Evidence That Branscum, Hill, and Ainley Unlawfully Received Bank Funds to Reimburse Their Campaign Contributions to Clinton's Gubernatorial Campaign.

On December 11, 1990, Hill approached Ainley and told him that Hill was collecting money for the Clinton gubernatorial campaign.[378] According to Ainley, Hill told him to contribute $800 and to have his wife contribute $200,[379] which they did.[380] Accordingly to

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[375] The Perry County Bank Deposit Slip for Mrs. Woodrow Hill for $250 (Sept. 26, 1991) (Doc. No. 1144-00000099); Check No. (starter check) from the account of Robert M. Hill payable to Elise Hill for $250 (Sept. 26, 1991) (Doc. No. 1144-00000101); Check No. 1135 from the account of Robert M. Hill payable to Kayla Hill for $550 (Sept. 30, 1991) (Doc. No. 1103-00000018); Check No. 1136 from the account of Robert M. Hill payable to Tracy Hill for $550 (Sept. 30, 1991) (Doc. No. 1103-00000020).

[376] The Perry County Bank Deposit slip for Tracy Hill for $550 (Sept. 30, 1991) (Doc. No. 1144-00000113); The Perry County Bank Deposit Slip for Kayla Hill for $550 (Sept. 30, 1991) (Doc. No 1144-00000118).

[377] Check No. 0176 from the account of Kayla Hill payable to the Clinton Committee for $250 (Sept. 26, 1991) (Doc. No. 1144-00000111); Check No. 229 from the account of Tracy Hill payable to the Clinton Committee for $250 (Sept. 26, 1991) (Doc. No. 1144-00000116); Check No. (illegible) from the account of Mrs. Woodrow Hill payable to the Bill Clinton Committee for $250 (Sept. 26, 1991) (Doc. No. 1144-00000155). The previous day Hill and Shirley each wrote $1,000 checks to the Clinton exploratory committee. Ex. 476 and Check No. (illegible) from the account of Shirley Hill payable to the Clinton Committee in the amount of $1000 (Sept. 25, 1991) (Doc. No. 1183-00000016).

[378] These contributions were probably intended to retire the considerable campaign debt, which amounted to at least $100,000. See Tr. at 37, United States v. Branscum et al., (E.D. Ark. July 7, 1996) (testimony of President William J. Clinton).

[379] See Tr. at 111, United States v. Branscum et al., (E.D. Ark. June 27, 1996) (testimony of Neal Ainley).

[380] Check No. 0156 from the account of Neal Ainley payable to Clinton for Governor for $800 (Dec. 17, 1990) (Doc. No. HM-00000004); Check No. 0157 from the account of Neil

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Ainley, Branscum or Hill told him to have a PCB employee prepare three PCB expense checks, totaling $7,000, to be charged as "legal and professional expenses." Consecutive checks: no. 13850 for $3,000, payable to Branscum; no. 13851 for $3,000, payable to Hill; and no. 13852 for $1,000, payable to Ainley, were prepared.[381] These checks were entered in the PCB books as "legal expenses." There was no backup documentation in the bank files to justify these payments.[382]

During December 1990, Branscum's family members wrote checks payable to Clinton for Governor, totaling $3,000.[383] The Hill family wrote checks in the exact same total.[384] As

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Ainley for $200 (Dec. 17, 1990) (Doc. No. HM-00000006).

[381] Check No. 13850 payable to Herby Branscum Jr. Attorney for $3000 (Dec. 11, 1990) (Doc. No. 1100-00000020); Check No. 13851 to Robert Hill CPA for $3000 (Dec. 11, 1990) (Doc. No. 1100-00000022); Check No. 13852 payable to Neal Ainley for $1000 (Dec. 11, 1990) (Doc. No. 1100-00000024).

[382] Tr. at 214-15, United States v. Branscum et al., No. 96-49 (E.D. Ark. July 7, 1996) (testimony of Robert Hill) (July 22, 1996).

[383] Check No.1053 from the account of Herby Branscum Jr. payable to Bill Clinton Campaign for $500 (Dec. 13, 1990) (Doc. No. 1144-00000049); Check No. 9647 from the account of Herby Branscum or Billie Jo Branscum payable to Bill Clinton Campaign for $500 (Dec. 12, 1990) (Doc. No. 1144-00000053); Check No. 0951 from the account of Elizabeth Ann Branscum payable to Bill Clinton Campaign for $500 (Dec. 11, 1990) (Doc. No. 1144-00000065); Check No.1829 from the account of John C. Branscum payable to Bill Clinton Campaign for $500 (Dec. 12, 1990) (Doc. No. 1144-00000087); Check No. 0256 from the account of James S. Branscum or Collette R. Branscum payable to the Bill Clinton Campaign for $500 (Dec. 9, 1990) (Doc. No. 1144-00000077); Bank Statement of James S. Branscum or Collette R. Branscum (Nov. 20 through Dec. 20, 1990) (Doc. No. 1100-00000048).

[384] Check No.3678 from the account of Shirley Hill payable to Clinton for Governor for $1000 (Dec. 11, 1990) (Doc. No. 1144-00000125); Check No. 0158 from the account of Tracy Hill payable to Clinton for Governor for $750 (Dec. 10, 1990) (Doc. No. 1144-00000129); Check No. 4330 from the account of Harold W. Hill or Mary Kay Hill payable to Clinton for Governor for $250 (Dec. 14, 1990) (Doc. No. 1144-00000161); Check No. 6544 from the account of Mrs. Woodrow Hill payable to Clinton for Governor for $1000 (Dec. 12, 1990) (Doc. No. 1144-00000 157).

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indicated above, Ainley and his wife received a check matching their prior contributions.

As of December 1990 Governor Clinton had a campaign debt - primarily on loans from PCB - in excess of $100,000.[385] Under a new Arkansas law, campaign contributions could not be raised from a period 30 days before a legislative session, through the session, and 30 days after the session.[386] A legislative session was scheduled to begin on January 15, 1991, so the last day that campaign contributions could be received for about four months was December 14, 1990.[387] On December 11, 1990, Fonda Lyle of the Governor's staff sent a memorandum to Nancy Hernreich, the Governor's scheduler, on the subject: "Bruce Lindsey 371-0808 requesting appt. for Rob Hill and Kent Dollar."[388] The text of the memo reads as follows:

> Bruce says Rob Hill, member of banking Commission and Chairman of Perry County Democratic party would like time for himself and Kent Dollar to meet with Gov. about two matters:
>
> 1. He has $5-6,000 to give Gov, and
>
> 2. He wants to put in a word for Herby Branscum to be appointed to Highway Commission.
>
> Please respond to Bruce rather than Mr. Hill.[389]

On December 14, 1990, Rob Hill, and Kent Dollar, a CPA who had done work for PCB,

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[385] See Tr. at 38, United States v. Branscum et al., No. 96-49 (E.D. Ark. July 7, 1996) (testimony of President William J. Clinton).

[386] See id.

[387] See id.

[388] Memo from Fonda Lyle to Nancy Hernreich (Dec. 11, 1990) (Doc. Nos. DEK509995 and 319-00028625).

[389] Id. Robert Hill testified that he called Bruce Lindsey to arrange the meeting. See Tr. at 130, United States v. Branscum et al., No. LR-CR-96-49 (E.D. Ark. July 22, 1996) (testimony of Robert Hill).

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met with Governor Clinton, giving him approximately $15,250 in campaign contribution checks.[390] Hill gave the Governor approximately $12,250 in checks that he and Branscum were responsible for. Dollar gave the Governor $3,000 in checks which he had raised.[391] In addition to the $7,000 in checks from Ainley and his wife, Branscum family members, and Hill family members, Branscum and Hill had solicited contributions to help retire the Governor's campaign debt from a number of persons.[392] On December 14, 1990, these checks, delivered by Hill and Dollar, were deposited along with other checks into the Clinton for Governor campaign account at PCB.[393]

On January 23, 1991, Governor Clinton appointed Branscum to a ten-year term on the Arkansas State Highway Commission.[394] On December 31, 1991, Governor Clinton re-appointed Hill to the Arkansas State Banking Commission.[395]

President Clinton testified that although he had no specific recollection of the meeting with Hill and Dollar, he did not doubt that he had met with Hill and received contributions.[396] President Clinton testified that his appointment of Branscum and his re-appointment of Hill had

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[390] See Tr. at 42-51, United States v. Branscum et al., No. LR-CR-96-49 (E.D. Ark. July 7, 1996) (testimony of President William J. Clinton).

[391] See id. at 229 (testimony of Robert Hill).

[392] See id. at 190-213.

[393] See id. 42-44 (testimony of President William J. Clinton).

[394] See id. at 27.

[395] See id. at 30-31.

[396] See id. at 26-27, 33-34.

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nothing to do with the contributions received from them.[397] He testified that Branscum was the best person under consideration, and he had known both men for a long time and they had been big supporters of his.[398] The President also testified that he did not question the source of the funds delivered to him by Hill.[399]

D. Indictment and Trial of Branscum and Hill.

On February 20, 1996, a federal grand jury returned indictments against Branscum and Hill, charging them with two counts of conspiracy, four counts of making false entries in bank records, four counts of misapplication of bank funds, and one count of making a false statement:

- **Count One** (Conspiracy with Ainley to impair, impede, obstruct, and defeat the lawful function of the FDIC and to violate 18 U.S.C. §§§ 656 and 1005): This count alleged that Branscum and Hill willfully made or caused to be made false and misleading entries in the books and records of PCB. These false entries included, but were not limited to, causing at least $7,200.00 in checks made payable to Branscum, Hill, and Ainley to be recorded in PCB's books and records in May and December 1990 as payments for convention expenses, miscellaneous expenses, and legal or professional services rendered to PCB, when those checks were actually used to reimburse Branscum, Hill, and Ainley and others for political contributions made at the behest of Branscum and Hill.

- **Count Two** (Conspiracy with Ainley to impair, impede, obstruct, and defeat the lawful function of the IRS and to violate 18 U.S.C. § 1005): This count was based upon facts indicating that on at least two occasions Ainley, at the direction of Branscum and Hill, failed to complete a CTR when the Clinton gubernatorial campaign withdrew cash in excess of $10,000.00. Specifically, Branscum and Hill caused Ainley not to submit a CTR to the IRS for either Lindsey's May 25, 1990 cashing of four sequentially numbered checks totaling $30,000.00 or the Clinton campaign's November 2, 1990 withdrawal of $22,500.00.

- **Counts Three, Four, and Five** (False Entries in Bank Records): This count alleged that Branscum and Hill, with intent to deceive the FDIC, knowingly and willfully made and caused to be made false and misleading entries in PCB's

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[397] See id. at 27, 31.

[398] See id. at 27-29, 32.

[399] See id. at 59.

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records. Specifically, Counts Three and Four alleged that Branscum and Hill caused checks numbered 13850 and 13851, payable to Branscum and Hill respectively, for $3,000.00 each, to be recorded in PCB's books as payment for legal and professional services rendered to PCB when the funds were actually for the purpose of reimbursing Branscum for political contributions made by him and members of his family. Count Five alleged that Branscum and Hill also caused check no. 13852, payable to Ainley for $1,000.00, to be recorded in PCB's books as payment for legal and professional services rendered to PCB when Branscum and Hill knew that the money actually reimbursed Ainley and his wife for political contributions made at the behest of Hill and Branscum.

- **Count Six** (Misapplication of Bank Funds): This count alleged that Branscum and Hill misapplied and caused to be misapplied PCB funds of more than $100.00. Specifically, Branscum and Hill caused check no. 13850, payable to Branscum for $3,000.00, drawn on PCB's legal and professional expense account when the funds were actually for the purpose of reimbursing Branscum for political contributions made by him and members of his family. Count Seven alleged that Branscum and Hill misapplied and caused to be misapplied PCB funds of more than $100.00. Specifically, Counts Seven and Eight alleged that Branscum caused checks numbered 13851 and 13852, payable to Hill for $3,000.00 and Ainley for $1,000.00, respectively, drawn on PCB's legal and professional expenses account when the funds were actually for the purpose of reimbursing Hill or Ainley and his wife for political contributions made at the behest of Branscum and Hill.

- **Count Nine** (False Entries in Bank Records): This count was based upon facts indicating that Branscum and Hill knowingly and willfully made and caused to be made false and misleading entries in PCB's books. Specifically, Branscum and Hill caused check no. 40239, a cashier's check payable to Branscum for $3,000.00, to be recorded in PCB's books and records as for payment of legal fees when the funds were actually for the purpose of reimbursing Branscum, members of his family, and certain of his employees for political contributions made at the direction of Branscum.

- **Count Ten** (Misapplication of Bank Funds): This count alleged that in 1991 Branscum and Hill misapplied and caused to be misapplied PCB funds, that is, a cashier's check payable to Branscum for $3,000.00, drawn on PCB, knowing that the $3,000.00 was not in payment for legal services performed for PCB but to reimburse Branscum, members of his family, and certain of his employees for political contributions made at the direction of Branscum.

- **Count Eleven** (False Statement): This count alleged that Branscum and Hill caused Ainley to certify as true and correct a statement that PCB files a CTR for each deposit, withdrawal, transfer, or exchange of currency of more than $10,000.00 for customers that have not been granted an exemption, when Branscum and Hill knew that no CTR had been filed for either the May 25, 1990

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or November 2, 1990 withdrawals.

The trial began on June 17, 1996. Ainley testified as a government witness. Branscum and Hill testified in their own defense. In addition, the defense presented testimony by Bruce Lindsey and testimony of President Clinton by videotape. On August 1, 1996, the jury acquitted Branscum and Hill as to counts Two, Nine, Ten, and Eleven, and could not agree on a verdict as to the remaining counts.[400] The Independent Counsel declined to re-try either Branscum or Hill on the counts upon which the jury deadlocked.

VIII. PROSECUTION OF SUSAN McDOUGAL FOR CRIMINAL CONTEMPT OF COURT FOR REFUSAL TO ANSWER GRAND JURY QUESTIONS.

A. Introduction.

In March 1994, at the request of regulatory Independent Counsel Fiske, a federal grand jury was empanelled in the Eastern District of Arkansas regarding the investigation of Madison Guaranty Savings & Loan Association. The first grand jury, which returned indictments against the McDougals, Tucker, and others, expired on March 23, 1996. From May 7, 1996 to May 5, 1998, a second federal grand jury empanelled in the Eastern District of Arkansas investigated whether any individuals or entities committed a violation of any federal criminal law related in any way to the relationships of James B. McDougal, President William Jefferson Clinton, or Mrs. Hillary Rodham Clinton with Madison Guaranty, Whitewater Development, or Capital Management Services, Inc. ("CMS"). This investigation included any federal crimes that arose out of the investigation itself, including perjury and obstruction of justice.

As detailed in other chapters of this Report, during 1982-87, Susan McDougal and Jim McDougal were the controlling owners of Madison Guaranty. From 1979 to 1992, the

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[400] Judgment, United States v. Branscum, et al, No. LR-CR-96-49 (E.D. Ark. Aug. 2, 1996).

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McDougals were also business partners of the President and Mrs. Clinton in Whitewater Development. Susan McDougal d/b/a Master Marketing received a $300,000 loan from David Hale's CMS on April 3, 1986.[401] On May 28, 1996, a jury convicted Susan McDougal on four felony counts related to that loan: mail fraud for submitting a false SBA Form 1031 in connection with the loan;[402] aiding and abetting in the misapplication of the funds from the loan;[403] aiding and abetting the making of a false entry in the reports and statements of CMS,[404] which stated that the purpose of the loan was for operating expenses of Master Marketing, when Susan McDougal knew that the proceeds would not be so used; and aiding and abetting in making a false statement for the purpose of influencing the actions of CMS by falsely representing that the purpose of the loan was to provide operating capital for Master Marketing.[405]

On August 20, 1996, District Court Judge George Howard Jr. sentenced Susan McDougal to two years in prison. She was subpoenaed on that date to appear before the grand jury. Her attorneys filed a motion to quash the subpoena, which was denied by U.S. District Court Judge Susan Webber Wright, who was overseeing the grand jury.

On September 4, 1996, McDougal was directed to appear before the grand jury. Judge Wright ordered McDougal to testify as to all matters about which she might be interrogated, and, consistent with 18 U.S.C. § 6002, the order precluded the use of any of the testimony against her

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[401] See United States v. McDougal, 137 F.3d 547, 550-52 (8th Cir. 1998).

[402] 18 U.S.C. § 1341.

[403] 18 U.S.C. § 657.

[404] 18 U.S.C. § 1006.

[405] 18 U.S.C. § 1014.

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in a criminal case, except a prosecution for perjury, making a false statement, or otherwise failing to obey the order. After the deputy foreman of the grand jury explained to McDougal that she could not simply read a statement but must answer questions, she refused to answer any questions.[406] Judge Wright held McDougal in civil contempt and directed that she be incarcerated until she answered the grand jury's questions. McDougal appealed Judge Wright's contempt order to the Eighth Circuit Court of Appeals, which affirmed.[407]

After the Independent Counsel obtained additional evidence related to Madison Guaranty, on April 23, 1998, Susan McDougal was again subpoenaed to appear before the Grand Jury, where the order granting her immunity and compelling her to testify truthfully remained in effect.[408] The grand jurors requested that Judge Wright explain to McDougal that the Order was still in effect and that there were further consequences if she disobeyed it. Despite the Court's renewal of its prior order, Susan McDougal refused to provide a substantial response to any questions.[409] Susan McDougal's two refusals to testify and her evasive answers to those few questions when she did respond, formed the basis for the grand jury's charge of obstruction of

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[406] United States v. Susan H. McDougal, No. LR-CR-98-82 (E.D. Ark.).

[407] Susan McDougal filed several motions for reconsideration of the contempt order, all of which were denied. See McDougal, 97 F.3d at 1093 n.4 (district court denied motion to vacate and motion to order incarceration for contempt to run concurrent with sentence for mail fraud)

[408] 18 U.S.C. § 6002.

[409] S. McDougal 4/23/98 GJ at 9-14. As noted in passing by the Court of Appeals, Susan McDougal's reticence did not seem to extend beyond those occasions when she was under court order to speak truthfully. See McDougal, 97 F.3d at 1095 (federal law does not prohibit grand jury witness from publicly disclosing grand jury proceedings and record reflects McDougal has extensively exercised that prerogative).

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justice charge.[410]

B. The Criminal Contempt and Obstruction of Justice Prosecution.

1. Pre-trial Proceedings.

On May 4, 1998, the grand jury for the Eastern District of Arkansas returned a three count indictment charging Susan McDougal with two counts of criminal contempt under 18 U.S.C. § 401(3) and one count of obstruction of justice under 18 U.S.C. § 1503(a).

Susan McDougal filed a number of motions relating to her indictment, many of them unopposed. On May 21-22, 1998, she filed an unopposed motion for extension of time in which to file motions, which the district court granted, giving her until June 30, 1998. On June 4, 1998, she filed a motion for continuance of trial date and time in which to file motions, which the court granted. On June 29, 1998, McDougal filed motions to dismiss the indictment (with various exhibits accompanied by her attorney's declaration) for a bill of particulars, for discovery, for disclosure of grand jury materials, and to reserve the right to file additional pre-trial motions. The court denied her motion to dismiss the indictment on December 1, 1998. The various continuances requested by McDougal resulted in a delay in the commencement of the trial until approximately 10 months after her indictment.

2. Trial.

On March 8, 1999, the trial began in Little Rock. Many prospective jurors were excused for cause after the completion of juror questionnaires. Jury selection itself lasted several days. Both Susan McDougal and the United States filed motions to exclude certain evidence at the trial. In response to McDougal's motions, the Independent Counsel filed various motions to exclude evidence on the ground that McDougal's evidence was designed to confuse the issues.

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[410] 18 U.S.C. § 1503.

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At trial, the Independent Counsel offered evidence that Susan McDougal disregarded the Court's order on September 4, 1996,[411] and, after the Independent Counsel had discovered additional documents related to Madison Guaranty and recalled her,[412] she again disregarded the Court's order on April 23, 1998.[413]

The Independent Counsel 's presentation included uncontroverted evidence as to the content of the Court's order and McDougal's noncompliance.[414] The Independent Counsel also offered evidence that McDougal was withholding relevant evidence from the Grand Jury.[415] Special Agent Michael Patkus of the FBI outlined for the jury certain transactions and documents that Susan McDougal would have been knowledgeable about and about which he would have liked to question her.[416] This evidence included a $27,600 Madison Guaranty cashier's check payable to "Bill Clinton."[417] Agent Patkus testified about another related check, written by

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[411] See Tr. at 506-24, United States v. McDougal, No. LR-CR-98-82 (E.D. Ark. Mar. 10, 1999).

[412] One such piece of evidence which the Independent Counsel gained access to were long lost original Madison Guaranty records produced by happenstance as a result of a 1997 tornado, that had been abandoned in the trunk of a former employee's car. A number of other documents were discovered during the continuing investigation. See Tr. at 574-79, 879, 1013, United States v. McDougal, No. LR-CR-98-82 (E.D. Ark. Mar. 11-16, 1999) (testimony of Michael Patkus).

[413] See id at 659 (testimony of Michael Patkus).

[414] See id. at 507-08 (testimony of Jennifer Castelberry).

[415] See, e.g., id. at 656-60, 893-94 (testimony of Michael Patkus). Some of the evidence related to Susan McDougal's knowledge of a loan the President may have received.

[416] Id. at 574-879 (testimony of Michael Patkus).

[417] Id. at 628 (testimony of Michael Patkus).

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"Susan McDougal" to Madison Guaranty, with the notation "pay off Clinton."[418] The Independent Counsel offered evidence that McDougal (like any other witness) was simply required to testify truthfully.[419] Three grand jurors testified about their desire for McDougal's testimony and her consistent refusal to provide it,[420] specifically addressing McDougal's refusal to answer questions necessary to provide the grand jury with information relevant to its investigation.[421]

Susan McDougal took the position that because of her lack of confidence in the Independent Counsel's desire for truth, she was justified in refusing to comply with the Court's order.[422] Specifically, she claimed that the Independent Counsel was not seeking the truth from her but was seeking evidence only to implicate the President in wrongdoing.[423]

McDougal also offered, over the objection of the Independent Counsel, the testimony of Julie Hiatt Steele, a defendant in a prosecution brought by the Independent under a different

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[418] Id. at 624.

[419] See id. at 785-87, 799 (testimony of Amy St. Eve); id. at 2423, 2589 (testimony of Ray Jahn). Susan McDougal's own witness, Stephen Smith, conceded that the Independent Counsel was seeking "truthful information." Id. at 1564 (testimony of Stephen Smith). His own testimony at the McDougals and Jim Guy Tucker's trial also indicated that the Independent Counsel never asked him to lie. Id. at 1571.

[420] See id. at 1095-51 (testimony of Jennifer Castleberry); id. at 1155-89 (testimony of Marsha High); id. at 1202-40 (testimony of John Washam).

[421] See id. at 1109-13 (testimony of Jennifer Castleberry); id. at 1169-70 (testimony of Marsha High); id. at 1202-17 (testimony of John Washam).

[422] See id. at 2162 (testimony of Susan McDougal).

[423] During the trial, Susan McDougal did not testify using the word "lie" in her allegations against the Independent Counsel or his staff, although she did use the word in a television interview with Tim Russert. Id. at 2106-07. The most she ever says is that the Independent Counsel was not seeking the truth. (See, e.g., id. at 2088, 2162).

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jurisdictional mandate, that Steele believed that the Independent Counsel wanted her to provide false testimony.[424]

On April 12, 1999, following five weeks of trial, the jury acquitted Susan McDougal on the obstruction of justice charge and deadlocked as to the two counts of criminal contempt.[425] The court denied the Independent Counsel 's motion for permission to contact jurors.[426] On May 25, 1999, the district court granted the Independent Counsel 's motion to dismiss the indictment as a result of the government's decision declining to retry McDougal.[427]

IX. EXECUTIVE GRANTS OF CLEMENCY

In December 2000, names of individuals reportedly being considered for grants of clemency by President Clinton -- including Susan McDougal and Webster Hubbell -- began to appear in the press.[428] The Independent Counsel contacted the Justice Department and asked to be advised of any requests for clemency made on behalf of McDougal, Hubbell, or any other individuals prosecuted by this Office. On December 20, Independent Counsel Robert Ray and Associate Independent Counsel Elliot Berke met with Deputy Attorney General Eric H. Holder Jr. and other officials from the Justice Department to discuss relevant clemency-related matters. During the meeting, Deputy Attorney General Holder informed the Independent Counsel that the

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[424] See id. at 2437-38 (testimony of Julie Hiatt Steele).

[425] Peggy Harris, McDougal acquitted on one count Jury dismisses obstruction charges; mistrial declared on two other charges, Peoria J. Star, Apr. 13, 1999 at A2, 1999 WL 7610983. The President was pleased to learn of Susan McDougal's acquittal. Id.

[426] Memorandum Opinion & Order, United States v. McDougal, No. LR-CR-98-82 (E.D. Ark. Apr. 28, 1999).

[427] Order, United States v. McDougal, No. LR-CR-98-82 (E.D. Ark. May 25, 1999).

[428] See, e.g., Eric Lichtblau, 300 FBI Agents March on White House, Justice, L.A. Times, Dec. 16, 2000, at A27.

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Justice Department had been asked to provide National Crime Information Center ("NCIC") criminal record checks for Jim Guy Tucker, Robert Palmer, and John Haley.[429]

On December 21, 2000, Independent Counsel Ray requested that the Justice Department advise him if any clemency requests were presented, formally or informally, for review by the Office of the Pardon Attorney or the Deputy Attorney General involving Webster Hubbell, Susan McDougal, or any other persons prosecuted by this Office.[430] This request paralleled Justice Department procedure as outlined in § 1.2111 of the United States Attorneys' Manual, formally enlisting the assistance of the U.S. Attorney in the district of a petitioner's conviction in aiding the Office of the Pardon Attorney (under the direction of the Deputy Attorney General) with its investigation and ultimate recommendation to the President.[431]

After December 21, 2000, there was no further communication between the Independent Counsel or the Justice Department on any clemency requests for Tucker, Palmer, or Haley -- or any other clemency requests for or by individuals prosecuted by this Office.

On his last day in office, January 20, 2001, President Clinton extended grants of clemency to 140 individuals, four of whom -- Susan McDougal, Chris Wade, Steve Smith, and Robert Palmer -- had been prosecuted by this Office.[432] After the pardons were announced, the

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[429] Neither Jim Guy Tucker nor John Haley was extended a grant of clemency by President Clinton.

[430] Letter from Robert W. Ray, Independent Counsel, to Eric H. Holder Jr., Deputy Attorney General (Dec. 21, 2000). Hubbell was not extended a grant of clemency by President Clinton.

[431] See United States Attorneys' Manual, Title I §§ 1-2.110-111.

[432] List of Presidential Pardons (Jan. 20, 2001) (Doc. Nos. MGSL-FR-00000076 through 83); Memorandum from Roger C. Adams, Pardon Attorney, to Robert Ray, Independent Counsel (Jan. 20, 2001) (concerning full and unconditional pardon of Christopher V. Wade); Memorandum from Roger C. Adams, Pardon Attorney, to Robert Ray, Independent Counsel

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Independent Counsel asked Justice Department officials about how and when these pardons were executed. The Justice Department officials told the Independent Counsel that they were not informed of the President's intentions with respect to any individuals prosecuted by this Office.

Forty-seven of the 140 grants of clemency executed by the President on January 20, 2001 reportedly did not go through the normal clemency process (including those extended to McDougal, Wade, and Smith),[433] drawing criticism and negative commentary from both current and former Justice Department officials. Margaret Colgate Love, who served as Justice Department Pardon Attorney from 1990 to 1997, pointed out in a Washington Post editorial that many of these pardons "were never submitted for Justice Department review[.]"[434] Love stated:

> The true scandal lies not so much in the pardon grants themselves as in the departing president's evident disdain for the system and his easy willingness to compromise a public trust. . . . The evident cronyism and irregularity of the final pardons will likely provoke an overhaul of the way pardon power is administered in the White House and the Justice Department.[435]

Roger Adams, the current Pardon Attorney who handled these matters, noted the unprecedented manner in which many of the pardons were executed, stating: "I've never seen anything like this . . . . We were up literally all night as the White House continued to add names of people they

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(Feb. 8, 2001) (concerning full and unconditional pardon of Steven A. Smith); Executive Grant of Clemency, William J. Clinton, President of the United States of America, to Robert William Palmer (A Full and Unconditional Pardon) (Jan. 20, 2001).

[433] Richard Serrano & Stephen Braun, 47 Pardons Skirted Review, Papers Show, L.A. Times, Feb. 8, 2001, at A1. See 28 C.F.R. § 1.1 et seq (1997).

[434] Margaret Colgate Love, Rescuing the Pardon Power, Wash. Post, Jan. 25, 2001, at A19. According to the Los Angeles Times, 30 of the 47 grants of clemency extended by the President involved individuals who did not file clemency applications with the Justice Department. Richard Serrano & Stephen Braun, 47 Pardons Skirted Review, Papers Show, L.A. Times, Feb. 8, 2001, at A1.

[435] Margaret Colgate Love, Rescuing the Pardon Power, Wash. Post, Jan. 25, 2001, at A19.

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wanted to pardon."[436] Former Deputy Attorney General Holder commented: "The president, the cause of justice and the American people would have been better served if the normal process had been followed."[437]

In testimony before the Senate Judiciary Committee, Pardon Attorney Adams discussed the Justice Department's lack of information about the pardoning of targets of Independent Counsel prosecutions, and the difficulty faced by the Department in completing the required administrative process:

> In several . . . cases in which the Department received nothing from the pardoned person, we were able to determine that the person had been prosecuted by an Independent Counsel. In these instances, we determined that the Independent Counsel conviction is the person's only federal conviction. We therefore are confident that it was this conviction that President Clinton intended to pardon, and we drafted the individual warrant accordingly. We obtained information as to dates of conviction and exact offenses for which these persons were convicted from the Internet web sites of several Independent Counsels, and in some cases obtained court documents such as the judgment orders, which gave the date of conviction and the United States Code citation for the offense of conviction.[438]

President Clinton's decision not to follow established procedures[439] with respect to individuals prosecuted by Independent Counsels, including McDougal, Wade, and Smith, is also

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[436] Amy Goldstein & Susan Schmidt, Clinton grants 140 pardons on last day, Wash. Post, Jan. 21, 2001, at A1.

[437] John F. Harris & James V. Grimaldi, Clinton: Pardons Served 'Justice', Wash. Post, Feb. 18, 2001, at A1.

[438] Hearing Concerning Recent Presidential Pardons Before the Senate Committee on the Judiciary, 106th Cong. (2001) (statement of Roger Adams, United States Pardon Attorney) (unpublished record). This Office provided judgment orders to the Pardon Attorney at his request.

[439] The regulations codified under 28 C.F.R. § 1.1 et seq concern proper procedures for consideration of clemency petitions. These regulations, however, are advisory only. They do not create an enforceable right in persons applying for executive clemency, and do not restrict the authority granted to the President under Art. II, sect. 2 of the Constitution.

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inconsistent with his prior public position regarding the use of his pardon authority. During an interview on The NewsHour with Jim Lehrer on September 23, 1996, President Clinton was asked about Susan McDougal and her refusal to testify before a federal grand jury about matters under investigation by this Office.[440] Jim Lehrer asked the President about Mrs. McDougal's refusal to testify because she believed the Independent Counsel was "out to get the Clintons":[441]

> Q. Susan McDougal told a federal judge in Little Rock the other day that the reason she was refusing to testify before a grand jury is that she believed Kenneth Starr, the independent counsel, was "out to get the Clintons." Do you agree with her?
>
> A. Well, I think the facts speak for themselves. All we know about her is she said what she said, and then her lawyer said that he felt they did want her to tell the truth; they wanted her to say something bad about us, whether it was the truth or not, and if it was false, it would still be perfectly all right, and if she told the truth and it wasn't bad about us, she'd simply be punished for it. That's what her lawyer said.
>
> Q. Do you believe him?
>
> A. I think that the facts speak for themselves. I think there's a lot of evidence to support that.
>
> Q. But do you personally believe that that's what this is all about, is to get you and Mrs. Clinton?
>
> A. Isn't it obvious?[442]

---

[440] The NewsHour with Jim Lehrer: Tr. of Jim Lehrer Interview of President William J. Clinton (PBS television broadcast, Sept. 23, 1996).

[441] Id. During a motion hearing held on September 3, 1996, Susan McDougal actually told the Court that the Independent Counsel "[didn't] want the truth" and "[t]hat's not what they're after." Tr. at 9, United States v. McDougal, No. GJ-96-3 (E.D. Ark. Sept. 3, 1996) (testimony of Susan McDougal). The next day, Susan McDougal appeared before the grand jury and was ordered, pursuant to 18 U.S.C. § 6002, to give testimony. S. McDougal 9/4/96 GJ at 40-41. McDougal refused to answer questions before the grand jury, including about whether or not President Clinton testified truthfully at her 1996 trial. S. McDougal 9/4/96 GJ at 46. McDougal repeated these allegations during testimony at her 1999 trial on charges of criminal contempt and obstruction of justice. Tr. at 2088, 2106-07, 2162, United States v. McDougal, No. LR-CR-98-82 (E.D. Ark. Mar. 17, 1999) (testimony of Susan McDougal).

[442] The NewsHour with Jim Lehrer: Tr. of Jim Lehrer Interview of President William J.

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President Clinton was then asked whether he would consider pardoning Susan McDougal and other targets of this Office's investigation:

> Q. If you're reelected, would you consider pardoning the McDougals and Jim Guy Tucker in a second term?
>
> A. I've given no consideration to that, and you know their cases are still on appeal. And they -- I would -- my position would be that their cases should be handled like others; they should go through -- that there's a regular process for that, and I have regular meetings on that. And I review those cases as they come up and after there's an evaluation done by the Justice Department, and that's how I think it should be handled.[443]

During the first of the 1996 presidential debates, Republican nominee Senator Bob Dole further questioned President Clinton on the pardon issue. President Clinton stated:

> Let me say what I've said already about this pardon issue. This is an issue they brought up. It's under -- there has been no consideration of it, no discussion of it. I'll tell you this: I will not give anyone special treatment and I will strictly adhere to the law, and this is what every president has done, as far as I know, in the past. But whatever other presidents have done, this is something I take seriously and that's my position.[444]

Clinton (PBS television broadcast, Sept. 23, 1996).

[443] Id. at 6-7. After the interview aired, the Independent Counsel wrote President Clinton, through his counsel, several times asking that he encourage Susan McDougal to testify. See, e.g., Letter from Kenneth W. Starr, Independent Counsel, to Hon. Charles F.C. Ruff, Counsel to the President (Feb. 14, 1997); Letter from Kenneth W. Starr, Independent Counsel, to Hon. Charles F.C. Ruff, Counsel to the President (Mar. 7, 1997); Letter from Kenneth W. Starr, Independent Counsel, to Hon. Charles F.C. Ruff, Counsel to the President (Apr. 29, 1997); Letter from Kenneth W. Starr, Independent Counsel, to Hon. Charles F.C. Ruff, Counsel to the President (June 6, 1997); Letter from Kenneth W. Starr, Independent Counsel, to Hon. Charles F.C. Ruff, Counsel to the President (Oct. 23, 1997). The President declined, through counsel, to encourage Susan McDougal to tell what she knew about the matters under investigation by this Office. See, e.g., Letter from Charles F.C. Ruff, Counsel to the President, to Kenneth W. Starr, Independent Counsel, responding to letters from the Independent Counsel dated February 14 and March 7, 1997 (Apr. 4, 1997); Letter from Charles F.C. Ruff, Counsel to the President, to Kenneth W. Starr, Independent Counsel, responding to letter from the Independent Counsel dated October 23, 1997 (Nov. 17, 1997).

[444] Tr. of United States Presidential Debate between President William J. Clinton and Former Sen. Robert J. Dole (Oct. 6, 1996) (Doc. No. MGSL-FR-00000125).

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On February 18, 2001, former President Clinton wrote an op-ed in the New York Times in which he stated that he pardoned certain individuals because he believed they were "unfairly treated and punished pursuant to the Independent Counsel statute then in existence."[445] Former President Clinton did not explain how McDougal, Smith, Wade, and Palmer -- or any other individuals prosecuted by Independent Counsels -- had been "unfairly treated."[446] In particular, he did not explain why Susan McDougal warranted a pardon when her co-defendant, former Arkansas Governor Jim Guy Tucker, or David Hale, who was prosecuted in part for the same transactions for which Susan McDougal was prosecuted, did not.[447]

---

[445] William Jefferson Clinton, My Reasons for the Pardons, N.Y. Times, Feb. 18, 2001, at 13WK.

[446] See id.

[447] Id.

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TABLE A - INDICTMENTS, PROSECUTIONS AND CONVICTIONS

NAME	ACTION/DATE	CHARGES	DISPOSITION
1. David Hale	Indictment 9/23/93 Superseding Indictment 2/17/94 Superseding Information 3/22/94	Four Felony Counts: Conspiracy; False Statements. Four Felony Counts: Conspiracy; False Statements. Two Felony Counts: Conspiracy; Mail Fraud.	***Guilty** Plea on 3/22/94. Sentenced 3/25/96: 28 months imprisonment; 3 years supervised release; $10,000 fine; restitution $2,040,000; $100 special assessment (2/6/98 -- sentence reduced to time served and fine abated).*
2. Charles Matthews	Indicted 9/23/93 Superseding Indictment 2/17/94 Superseding Information 6/23/94	Two Felony Counts: Conspiracy. One Felony Count: Conspiracy. Two Misdemeanor Counts: Bribery.	***Guilty** Plea on 6/23/94. Sentenced 1/3/95: 16 months imprisonment; one year of supervised release; $7,500 fine; $25 special assessment.*
3. Eugene Fitzhugh	Indicted 9/23/93 Superseding Indictment 2/17/94 Superseding Information 6/23/94	Two Felony Counts: Conspiracy. One Felony Count: Conspiracy. One Misdemeanor Count: Bribery.	***Guilty** Plea on 6/23/94. Sentenced 10/22/96: 10 months imprisonment - first five months in a halfway house or medical facility and final five months on home detention; 1 year supervised release; $3,000 fine; $25 special assessment.*
4. Robert W. Palmer	Information 12/5/94	One Felony Count: Conspiracy.	***Guilty** Plea on 12/5/94. Sentenced 6/16/95: 3 years probation - first*

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NAME	ACTION/DATE	CHARGES	DISPOSITION
			year home detention; $5,000 fine.
5. Webster L. Hubbell	Information 12/6/94	Two Felony Counts: Mail Fraud; Tax Evasion.	***Guilty** Plea on 12/6/94. Sentenced 6/23/95: 21 months imprisonment, followed by 3 years supervised release; restitution of $135,000; 48 hours of community service at ADC.*
6. Neal T. Ainley	Indictment 2/28/95 Superseding Information 5/2/95	Five Felony Counts: Conspiracy, Failure to File Currency Transaction Reports, False Entries, and False Statements. Two Misdemeanor Counts: Willfully delivering/disclosing fraudulent document.	***Guilty** Plea on 5/2/95. Sentenced: 1/18/96; 2 years probation; first year 8 hours per week community service; $1,000 fine; $50 special assessment.*
7. Christopher V. Wade	Information 3/21/95	Two Felony Counts: Bankruptcy Fraud/ False Applications and Certifications to Financial Institution.	***Guilty** Plea on 3/21/95. Sentenced 12/1/95: 15 months imprisonment; 3 years supervisory release; $3,000 fine; $100 special assessment.*
8. William J. Marks Sr.	Indictment 6/7/95 Superseding Information 8/28/97	Three Felony Counts: Conspiracy to Defraud SBA, False Statements, Conspiracy to Defraud IRS. One Felony Count: Conspiracy to Defraud U.S.	***Guilty** Plea on 8/28/97. Sentenced 5/18/98: 4 years supervisory probation; 4 hours community service per week for 4 years; $1,000,000 restitution; $6,000 fine; $50 special assessment.*

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NAME	ACTION/DATE	CHARGES	DISPOSITION
9. Jim Guy Tucker	Indictment 6/7/95 Superseding Information 2/20/98	Three Felony Counts: Conspiracy to Defraud SBA, False Statements, Conspiracy to Defraud IRS. One Felony Count: Conspiracy to Defraud U.S.	***Guilty** Plea on 2/20/98. Sentenced 5/17/99: restitution of $1,000,000; 4 years probation (4 hours per week of community service); fine of $6,000; $50 special assessment. On 7/3/00, the restitution was remanded to district court. On 12/1/00 resentencing was deferred.*
10. John Haley	Indictment 6/7/95 Superseding Information 2/20/98	One Felony Count: Conspiracy to Defraud IRS. One Misdemeanor Count: Aiding and Abetting Others in Willful Failure to Supply Information to IRS.	***Guilty** Plea 2/20/98. Sentenced 8/20/98: 3 years supervised probation; 8 hours community service per week for 3 years; $40,000 restitution; $30,000 fine.*
11. Stephen A. Smith	Information 6/8/95	One Misdemeanor Count: Conspiracy.	***Guilty** Plea on 6/8/95. Sentenced 7/12/96: One year probation; 100 hours community service; $1,000 fine; $25 special assessment.*
12. Larry Kuca	Information 7/13/95	One Misdemeanor Count: Conspiracy.	***Guilty** Plea on 7/13/95. Sentenced 10/11/95: 2 years probation; 80 hours community service; restitution to SBA of $65,862; $25 special assessment.*

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NAME	ACTION/DATE	CHARGES	DISPOSITION
13. Jim Guy Tucker	Indictment 8/17/95 Trial 3/4/96 Verdict 5/28/96	Eleven Felony Counts: Conspiracy, Wire Fraud, Bank Fraud, Mail Fraud, Misapplication of Funds, False Entries in SBA Reports, False Statements.	***Guilty** Verdict on two counts: Conspiracy and Mail Fraud (not guilty on Wire Fraud, Bank Fraud, and Misapplication of Funds). Sentenced 8/19/96: 4 years probation (18 months home detention); community service; restitution to SBA of $150,000 plus interest; $25,000 fine. On 2/23/98, 8th Circuit remanded for further hearing on juror misconduct issue. Denied by district court 2/17/99, affirmed by 8th Circuit on 2/27/01. Motion to vacate sentence filed 8/17/00.*
14. James B. McDougal	Indictment 8/17/95 Trial 3/4/96 Verdict 5/28/96	Nineteen Felony Counts: Conspiracy, Wire Fraud, Bank Fraud, Mail Fraud, Misapplication of Funds, False Statements, False Entries in SBA Report.	***Guilty** Verdict on eighteen counts (not guilty on one Mail Fraud charge). Sentenced 4/14/97: 3 years imprisonment; 3 years probation after prison (1st year home detention); restitution to SBA and FDIC, if able, of $4,274,301; $10,000 fine; $900 special assessment. Died on 3/8/98.*
15. Susan H. McDougal	Indictment 8/17/95 Trial 3/4/96	Eight Felony Counts: Conspiracy, Wire Fraud, Mail Fraud, False Entries in SBA Report,	***Guilty** Verdict on four counts: Mail Fraud, Misapplication of Funds, False Entries in SBA Report, False*

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NAME	ACTION/DATE	CHARGES	DISPOSITION
	Verdict 5/28/96	Misapplication of Funds, False Statements.	*Statements. Sentenced 8/20/96: 24 months imprisonment; 3 years probation following prison; 104 hours community service each year; $5,000 fine; restitution of $300,000 plus interest to SBA. Conviction affirmed; jailed on contempt of court charges 9/9/96. Appeal on contempt denied. Commenced sentence 3/8/98. Sentence reduced to time served 6/25/98.*
16. Webster L. Hubbell	Indictment 11/13/98	Fifteen Felony Counts: Impede the FDIC & RTC; Fraud; False Statements to FDIC; False Statements to RTC; Perjury; Mail Fraud.	***Guilty** Plea to Count One entered 6/30/99, to scheme to conceal material facts from FDIC and RTC under 18 U.S.C. § 1001. Sentenced to one year of probation; $100 special assessment.*

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TABLE B

OTHER MATTERS NOT RESULTING IN CONVICTIONS

NAME	ACTION/DATE	CHARGES	DISPOSITION
1. Herby Branscum Jr.	Indictment 2/20/96 Trial 6/17-8/1/96	Eleven Felony Counts: Conspiracy; False Entries; Misapplication of Funds; False Statements.	*Verdict:* ***Not Guilty*** *on Counts 2, 9, 10, and 11. Mistrial on Counts 1, 3, 4, 5, 6, 7, and 8.* *Decision made 9/13/96 not to retry.*
2. Robert M. Hill	Indictment 2/20/96 Trial 6/17-8/1/96	Eleven Felony Counts: Conspiracy; False Entries; Misapplication of Funds; False Statements.	*Verdict:* ***Not Guilty*** *on Counts 2, 9, 10, and 11. Mistrial on Counts 1, 3, 4, 5, 6, 7, and 8.* *Decision made 9/13/96 not to retry.*
3. Webster L. Hubbell	Indictment 4/30/98 Superseding Information 6/30/99	Nine Felony Counts: Conspiracy; Impede and Impair IRS; Tax Evasion; Aid in Preparing a False Return; Mail Fraud; Wire Fraud.	*Conditional guilty plea on 6/30/99 to misdemeanor tax charge pending review granted 10/12/99 by Supreme Court on scope of act of production immunity. On 6/5/00, the Supreme Court vacated the indictment. On 10/20/00, conditional plea and misdemeanor tax charge were vacated.*
4. Suzanna W. Hubbell	Indictment 4/30/98	Eight Felony Counts: Conspiracy;	***Dismissed*** *pursuant to Hubbell*

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NAME	ACTION/DATE	CHARGES	DISPOSITION
		Impede and Impair IRS; Tax Evasion; Mail Fraud; Wire Fraud.	*guilty plea on 6/30/99.*
5. Michael C. Schaufele	Indictment 4/30/98	Nine Felony Counts: Conspiracy; Impede and Impair IRS; Tax Evasion; Aid in Preparing a False Tax Return; Mail Fraud; Wire Fraud.	***Dismissed** pursuant to Hubbell guilty plea on 6/30/99.*
6. Charles C. Owen	Indictment 4/30/98	Nine Felony Counts: Conspiracy; Impede and Impair IRS; Tax Evasion; Mail Fraud; Wire Fraud.	***Dismissed** pursuant to Hubbell guilty plea on 6/30/99.*
7. Susan H. McDougal	Indictment 5/4/98 Trial 3/8-4/12/99	Three Felony Counts: Criminal Contempt (two counts); Obstruction of Justice.	*Verdict 4/12/99: **Not Guilty** on Count Three (obstruction of justice); Hung jury on Counts One and Two (criminal contempt).* *Decision not to retry on 5/25/99.*

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TABLE C

EXECUTIVE GRANTS OF CLEMENCY

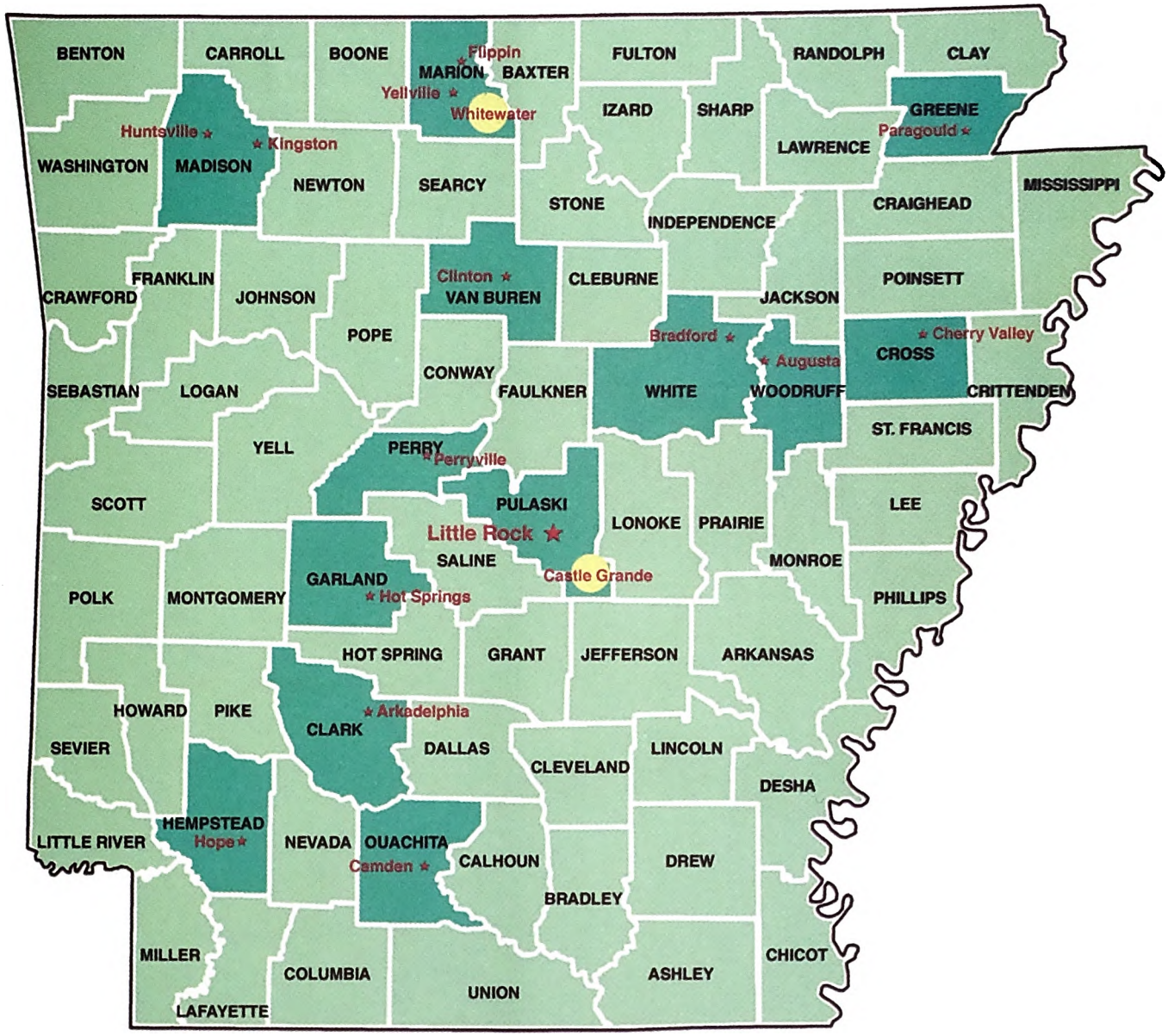
NAME	ACTION/DATE	BASIS OF CLEMENCY
1. Susan Henley McDougal	Full and Unconditional Pardon January 20, 2001	*For her conviction in the United States District Court for the Eastern District of Arkansas on an indictment (Docket No. LR-CR-95-3993) charging violation of Section 1341, Title 18, United States Code, Section 657, Title 18, United States Code, Section 1006, Title 18, United States Code, and Section 1014, Title 18, United States Code, for which she was sentenced on August 20, 1996, to twenty-four months in prison, three years probation following prison, one hundred and four hours of community service each year, a $5,000 fine, and restitution in the amount of $300,000 plus interest to the SBA.*
2. Robert William Palmer	Full and Unconditional Pardon January 20, 2001	*For his conviction in the United States District Court for the Eastern District of Arkansas on an information (Docket No. LR-CR-94-240) charging violation of Section 371, Title 18, United States Code, for which he was sentenced on June 16, 1995 to three years' probation and a fine of $5,000.*
3. Steven A. Smith	Full and Unconditional Pardon January 20, 2001	*For his conviction in the United States District Court for the Eastern District of Arkansas on an information (Docket No. LR-CR-95-118) charging violation of Section 371, Title 18, United States Code, for which he was sentenced to one year of probation and a fine of $1,000.*

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4. Christopher V. Wade	Full and Unconditional Pardon January 20, 2001	*For his conviction in the United States District Court for the Eastern District of Arkansas on an information (Docket No. 4:95CR00048-1) charging violation of Sections 152 and 1014, Title 18, United States Code, for which he was sentenced to 15 months' imprisonment, three years' supervised release, and a fine of $3,000.*

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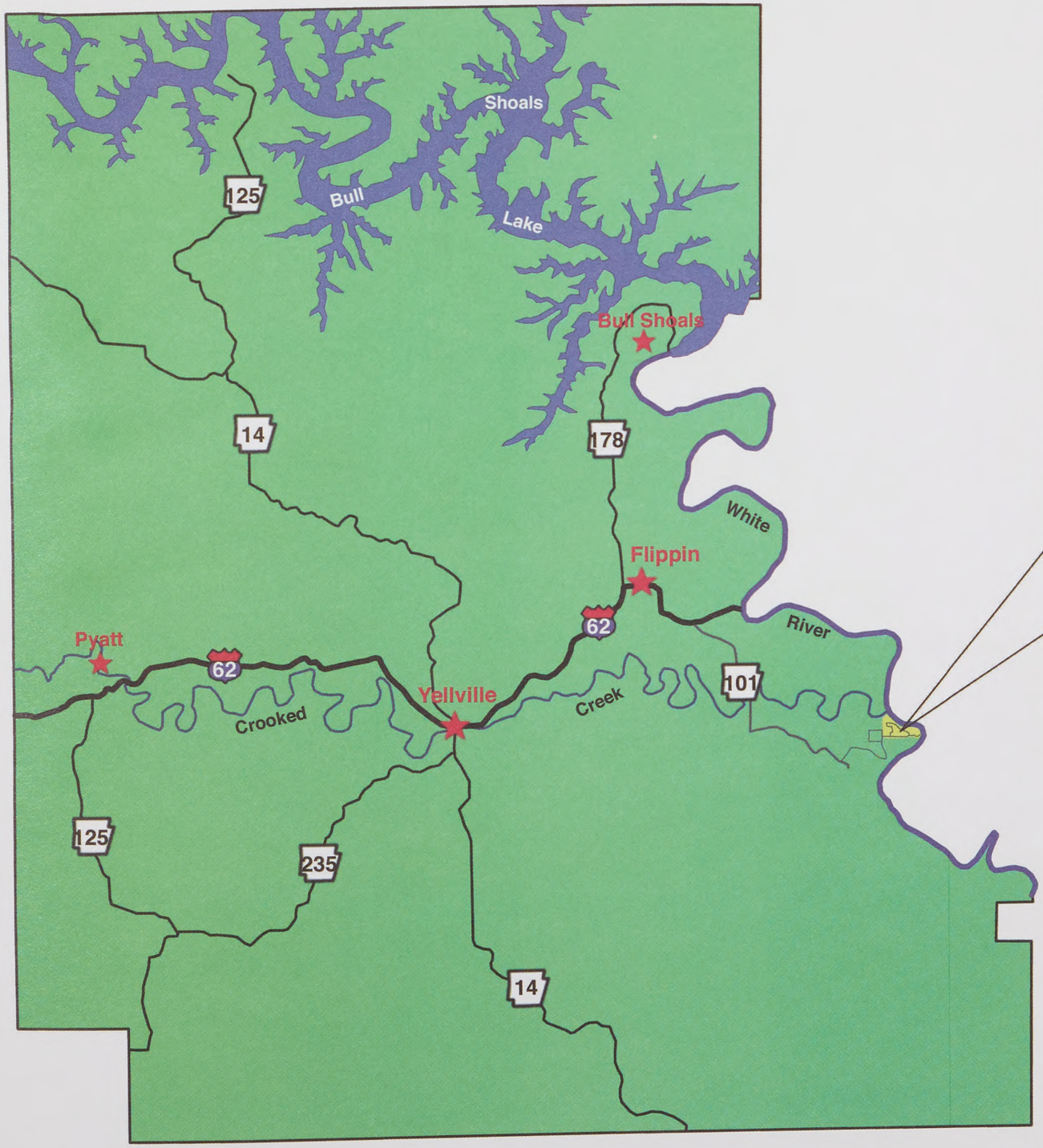


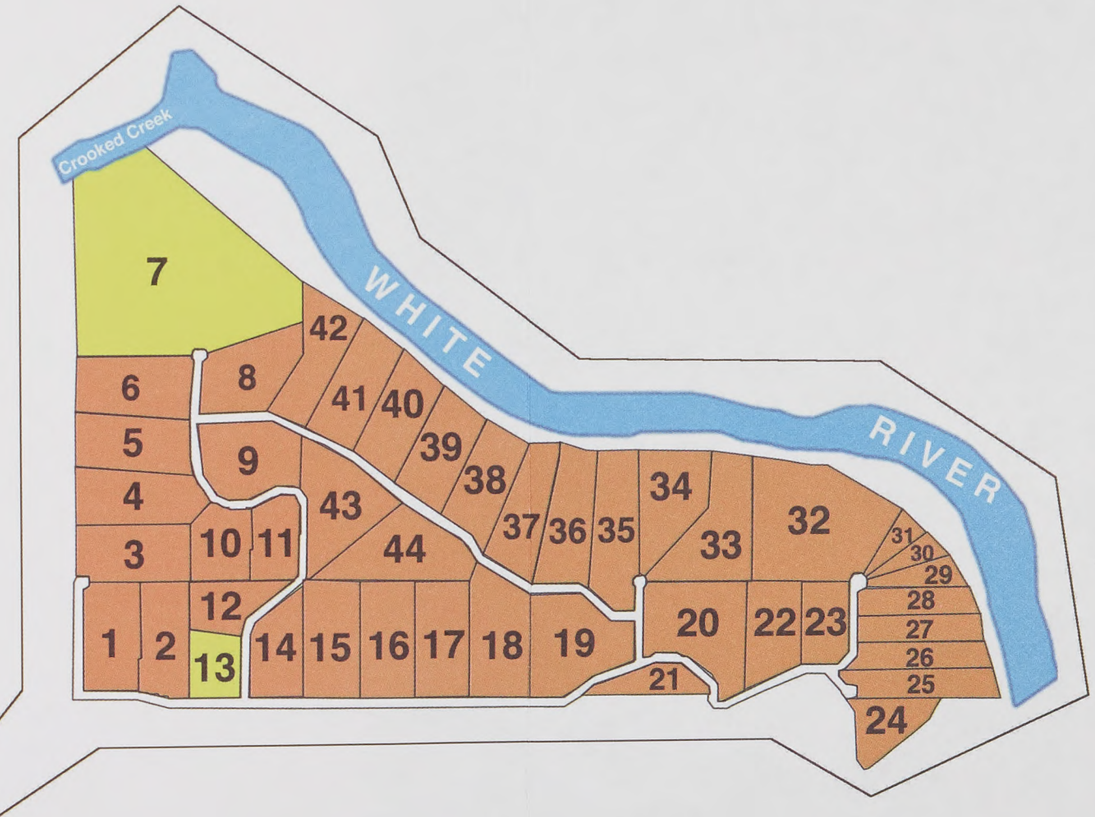
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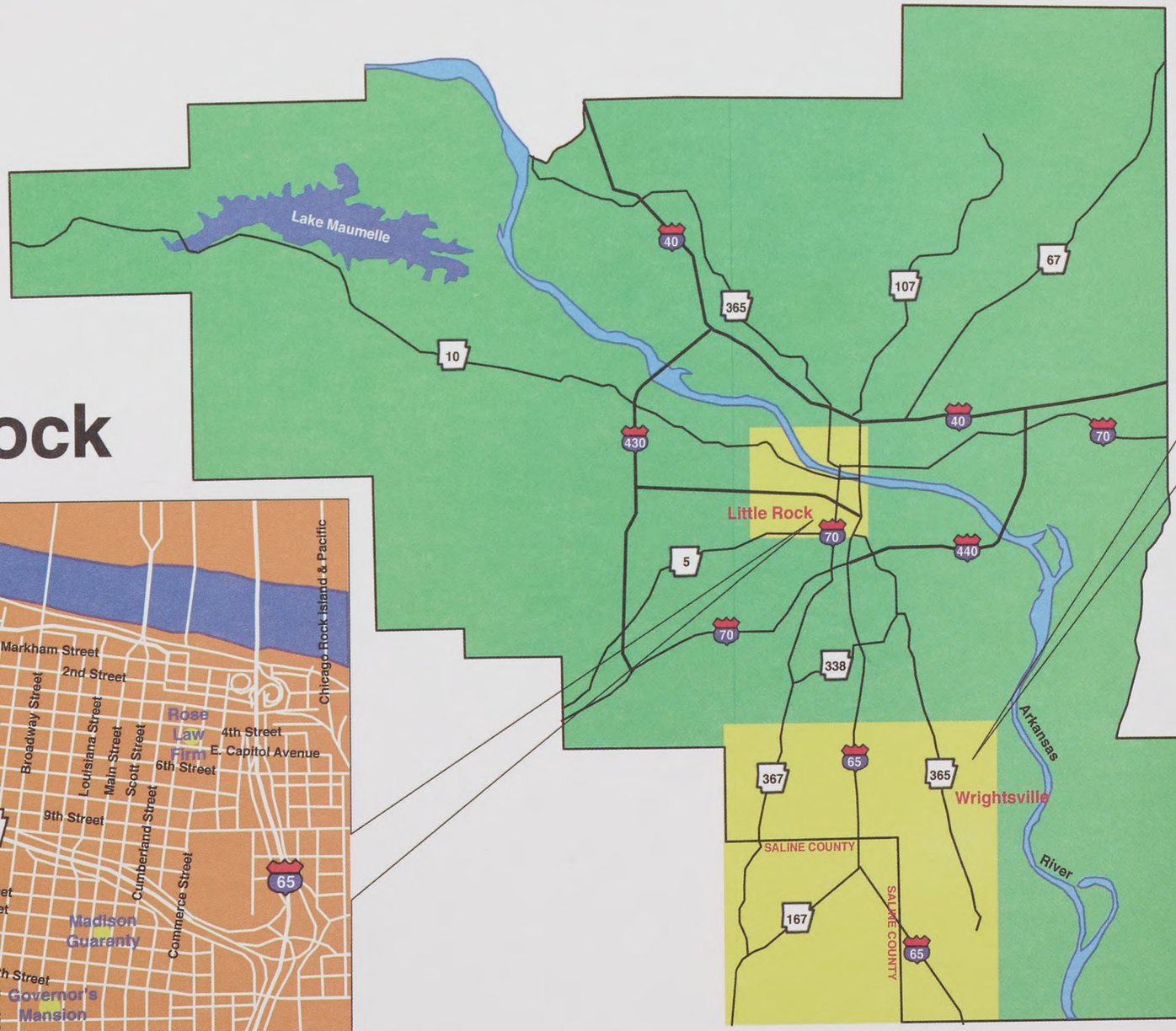




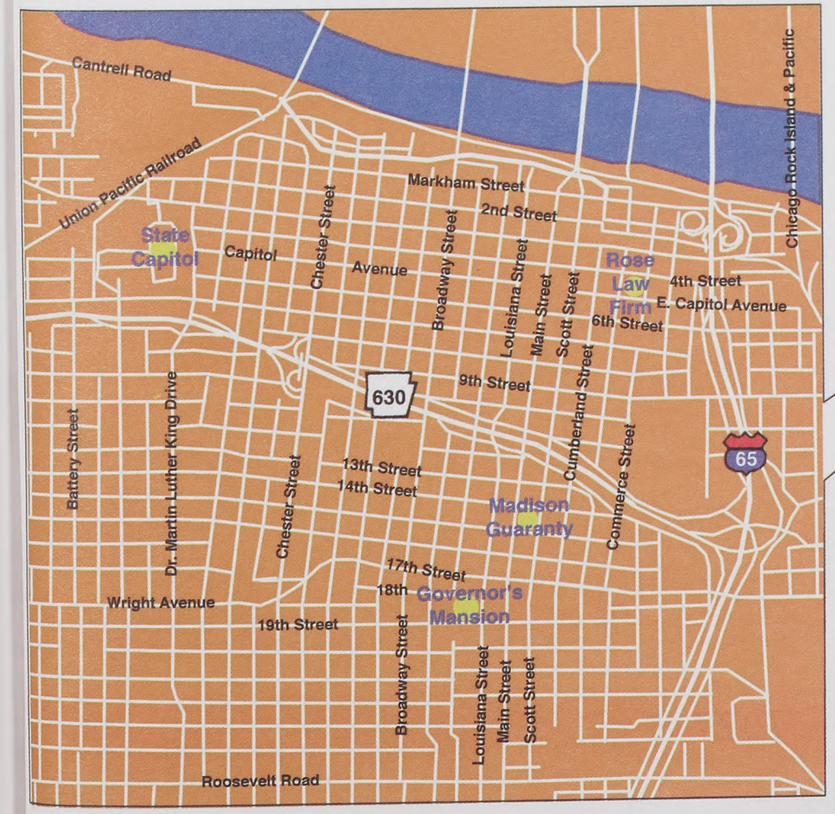
Whitewater Property

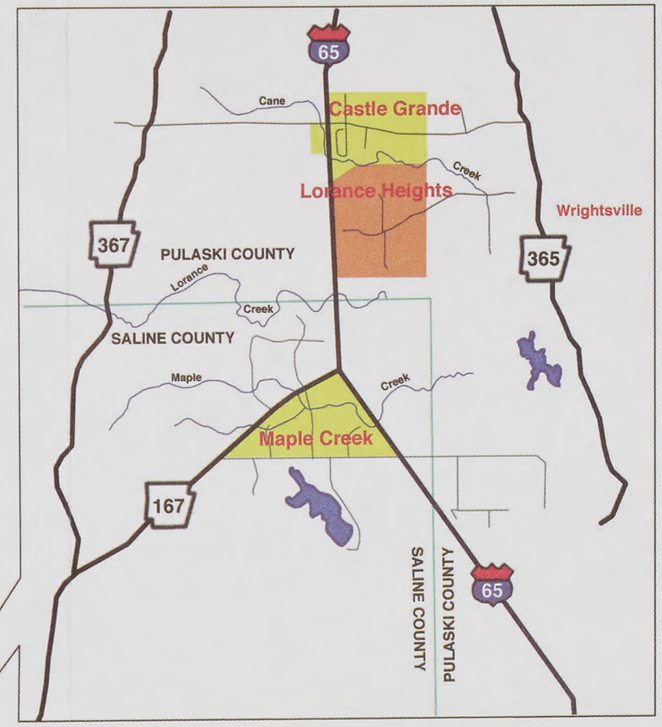
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PULASKI COUNTY



Little Rock





Castle Grande
Lorance Heights
Maple Creek

Google

United States Court of Appeals
For the District of Columbia Circuit

Division for the Purpose of
Appointing Independent Counsels
Division No. 94–1

Final Report of the Independent Counsel

In Re: Madison Guaranty Savings & Loan Association

Volume II: Arkansas Investigation

Robert W. Ray
Independent Counsel

Received January 5, 2001
Filed March 2, 2001
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Washington, D.C.

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VOLUME II
ARKANSAS INVESTIGATION

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PART A

THE CLINTONS, THE McDOUGALS, AND THE WHITEWATER DEVELOPMENT COMPANY

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I. INTRODUCTION

At the core of this Office's investigation lies a parcel of land near the White River in Marion County, Arkansas called "Whitewater." Two couples, Jim and Susan McDougal, and Attorney General and Mrs. Clinton, purchased this land in 1978 and soon after formed a corporation -- the Whitewater Development Company, Inc. ("Whitewater Development" or "Whitewater") -- to manage lot sales and other developments. The financial arrangements relating to the land and the company came under scrutiny during the 1992 presidential campaign. Press reports questioned the relationship between the Clintons, the McDougals, their land investments, and the banking activity at two McDougal-controlled financial institutions -- Madison Bank & Trust ("Madison Bank") and Madison Guaranty Savings & Loan Association ("Madison Guaranty"). In 1986, Madison Guaranty failed, costing U.S. taxpayers $73 million to pay off the federally insured depositors.

On September 1, 1992, the Kansas City, Missouri office of the Resolution Trust Corporation ("RTC") submitted Criminal Referral No. C-0004 to the U.S. Attorney for the Eastern District of Arkansas and the FBI Little Rock field office. The RTC's referral examined criminal allegations relating to Madison Guaranty and other entities controlled by its owner, Jim McDougal. Among these entities was Whitewater Development. The RTC's referral named Mr. and Mrs. McDougal as suspects and both Governor and Mrs. Clinton as potential witnesses.

Scrutiny of the Clintons' involvement in Whitewater intensified in 1993 when Little Rock Municipal Court Judge David Hale told reporters that his company, Capital Management Services, Inc. ("CMS"), had made an illegal loan to Susan McDougal, and that then-Governor

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Bill Clinton had personally pressed him to make the loan.[1]

Also in 1993, RTC agents prepared nine additional criminal referrals concerning Madison Guaranty. As a result of these ten criminal referrals, criminal investigations concerning Madison Guaranty were initiated during mid-1993 and early 1994 by senior Justice Department officials: first by the United States Attorney in Little Rock, Arkansas; then under the direction of veteran Department of Justice trial attorney and former United States Attorney Donald Mackay; and later under regulatory Independent Counsel Robert B. Fiske Jr., also a former United States Attorney.

The Attorney General eventually requested the appointment of an Independent Counsel to investigate the business dealings of Jim McDougal, the Clintons, Whitewater Development, Madison Guaranty, and CMS. This Part is devoted to one aspect of that inquiry -- the relationship between Jim McDougal, the Clintons, and Whitewater Development.

II. FINDINGS

Having concluded the investigation of the McDougals and the Clintons' relationship with Whitewater Development, the Independent Counsel reports the following findings and conclusions.

Concerning the Whitewater property and Whitewater Development:

- The Clintons and McDougals purchased the Whitewater property in 1978 as an equal partnership. They transferred the land to the Whitewater Development Company, Inc. in 1979.

- Whitewater Development failed, losing over $80,000.

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[1] See, e.g., Richard Keil, White House Seeks to Disassociate Clinton from Probe, A.P., Nov. 2, 1993.

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- Jim McDougal bought out the Clintons' share of Whitewater Development in 1992 for $1,000.

Concerning the operation and management of Whitewater Development:

- The Clintons contributed approximately $36,862.33 to the venture.

- The McDougals contributed approximately $80,076.03.

- The McDougals exercised substantially all managerial and operational control from 1978 until 1986.

- After 1986, Mrs. Clinton took a more active role in the management and operation of Whitewater Development.

Concerning the Whitewater Development loans:

- The principal mortgage acquisition loan for the purchase of the Whitewater land -- Citizens Bank & Trust loan no. 5885 -- was sometimes in arrears, and payments were irregular.

- On occasion, Jim McDougal, Whitewater Development, and the Clintons and McDougals together took out loans to pay Whitewater Development's obligations.

- Mrs. Clinton took out a loan in her name from Madison Bank to construct a model home on Whitewater Estates.

- Governor Clinton took out a loan from Security Bank of Paragould in substitution of Mrs. Clinton's construction loan, because bank regulators had asserted that Mrs. Clinton's loan violated banking regulations.

- A loan from Madison Guaranty was taken out in Governor Clinton's name to retire another loan taken out by Jim McDougal in the name of Whitewater Development at Madison Bank, because bank regulators had also asserted that the Whitewater Development loan violated banking regulations.

- The Madison Guaranty loan taken out in Bill Clinton's name was satisfied by a nominee loan to Chris Wade, and a payment from the James B. McDougal trustee account. The Wade nominee loan was paid off with a Whitewater Development check to Wade's Ozark Realty Co., which caused an overdraft in Whitewater Development's account at Madison Guaranty that was covered with funds from a

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$135,000 loan taken out by Flowerwood Farms, Inc. (a McDougal entity) at Stephens Security Bank.

- Jim and Susan McDougal fraudulently secured a $300,000 loan from CMS. They used $111,524.21 to pay off the $135,000 loan at Stephens Security Bank; $25,000 of the CMS loan was used as a down payment for Whitewater Development's purchase of property known as Lorance Heights.

- Jim and Susan McDougal executed a note, contract, and mortgage with International Paper on behalf of Whitewater Development in 1986 to fund the remainder of the Lorance Heights purchase. In December 1986, Whitewater Development, through Jim McDougal as president and Susan McDougal as secretary, transferred title to another real estate entity controlled by the McDougals.

Concerning the criminal culpability of Jim McDougal and Chris Wade:

- Jim McDougal engaged in numerous fraudulent financial transactions for the benefit of Whitewater Development involving Madison Guaranty and other corporate entities. Jim McDougal was convicted of felonies in May 1996 arising from a series of fraudulent transactions he committed involving Madison Guaranty and CMS. Susan McDougal was convicted of felonies in May 1996 involving the fraudulent loan she received from CMS.

- Chris Wade committed bankruptcy fraud when he purchased Lot 7 of Whitewater Estates. Wade pleaded guilty to two felony counts in March 1995.

Concerning President Clinton and Mrs. Clinton:

- Insufficient evidence exists to prove beyond a reasonable doubt that Mrs. Clinton knowingly participated in the criminal financial transactions Jim McDougal engaged in to benefit Whitewater Development.

- Insufficient evidence exists to prove beyond a reasonable doubt that Governor Clinton knew of, or approved of, the fraudulent $300,000 CMS loan to Susan McDougal.

- Insufficient evidence exists to prove beyond a reasonable doubt that President Clinton knowingly gave false testimony when he denied receiving a loan from Madison Guaranty.

- Insufficient evidence also exists to prove beyond a reasonable doubt that President

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Clinton knowingly gave false testimony about his lack of knowledge of the Lorance Heights acquisition. In light of these conclusions, the Independent Counsel also determined that there was no "substantial and credible information" warranting referral of these allegations to Congress for consideration of impeachment under 28 U.S.C. § 595(c).

- Insufficient evidence exists establishing that Governor Clinton knowingly participated in the criminal financial transactions Jim McDougal engaged in to benefit Whitewater Development.

III. FACTUAL SUMMARY

This Part summarizes the facts and evidence the investigation uncovered about the relationship between the Clintons, the McDougals, and the Whitewater partnership and corporation.[2]

First, this Part summarizes the relationship between the Clintons, the McDougals, and Whitewater, from its inception in 1978 to its conclusion in 1992.

Second, this Part details the ten separate loans associated with Whitewater taken out in its name or which conferred a benefit on the business and its owners. Many of these loans were

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[2] This Volume contains five appendices relating to Whitewater:

Appendix 1 details sales of Whitewater lots from 1980 through 1991.

Appendix 2 contains reconstructed repayment schedules for all loans made to or which conferred a benefit on the Whitewater partnership and/or corporation.

Appendix 3 depicts the cash flow transactions linking the $300,000 loan by CMS to the $27,600 loan taken out in Bill Clinton's name, and Madison Bank's $30,000 loan to Whitewater Development.

Appendix 4 lists all the loans, advances, and repayments made by and to the Clintons and the McDougals relating to the Whitewater venture. Appendix 4 also includes a listing of the errors found in the Lyons Reports.

Appendix 5 describes the illegal financial transactions Jim McDougal engaged in with Whitewater Development.

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interrelated.

Third, this Part details the Clintons' and the McDougals' management of Whitewater Development and summarizes loans and advances to Whitewater Development made by both the Clintons and the McDougals.

Fourth, this Part reviews the Clintons' personal and corporate tax filings for the relevant years.

Fifth, this Part discusses Jim McDougal's crimes involving Whitewater, and Chris Wade's crimes committed through the purchase and sale of a Whitewater lot.

A. The Clintons' Involvement with Whitewater Began in 1978, When the Partnership First Purchased 230.24 Acres, and Ended in 1992, When the Clintons Were Bought Out by Jim McDougal.

1. The Clintons' Participation in Whitewater Grew Out of Personal, Political, and Professional Ties Between Bill Clinton and Jim McDougal.

a. President Clinton Met Jim McDougal in 1968.

Bill Clinton and Jim McDougal met in Little Rock during the summer of 1968, shortly after Clinton graduated from Georgetown University.[3] Lee Williams, the administrative assistant to Senator J. William Fulbright, introduced them at the Arkansas senator's Marion Hotel reelection headquarters.[4] McDougal was in charge of constituent services for Senator Fulbright,

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[3] J. McDougal 4/2/97 GJ at 12-13; see also W. Clinton 5/24/95 Interrog. Resp. at 2-3 ("As of August, 1978, . . . I had known Jim McDougal for about ten years").

[4] J. McDougal 4/2/97 GJ at 12; Jim McDougal & Curtis Wilkie, Arkansas Mischief 113 (1998).

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and was helping with the campaign.[5] Clinton had worked part-time for Senator Fulbright while attending college and volunteered to help the campaign before he left for Oxford University.[6]

After Clinton and McDougal became friends,[7] McDougal became Clinton's political supporter.[8] From 1974 until 1978, McDougal saw Bill and Hillary Rodham, whom McDougal met in the early to mid-1970s,[9] regularly.[10] McDougal went to their October 1975 wedding, and the Clintons went to McDougal's wedding to Susan Henley the following May.[11]

b. Bill Clinton and Jim McDougal Began Their Financial Relationship in 1977.

In 1977, after becoming attorney general, Clinton purchased five acres from Rolling Manor, Inc. ("Rolling Manor"), an Arkansas corporation Jim McDougal and Senator Fulbright

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[5] Jim McDougal & Curtis Wilkie, Arkansas Mischief 113 (1998).

[6] W. Clinton 4/28/96 Depo. at 9-10, 13, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark.). But see J. McDougal 4/2/97 GJ at 12-13 (recalling his introduction to Mr. Clinton at the Marion Hotel in 1968).

[7] The Clintons did not consider themselves social friends of the McDougals, however. W. Clinton 7/22/95 Depo. at 8; H. Clinton 7/22/95 Depo. at 53-54; H. Clinton 4/25/98 Depo. at 13.

[8] W. Clinton 7/22/95 Depo. at 42; see also W. Clinton 5/24/95 RTC Interrog. Resp. at 53.

[9] Mrs. Clinton said she did not meet McDougal until the middle or late 1970s. H. Clinton 3/24/95 RTC Interrog. Resp. at 5. McDougal remembered meeting Mrs. Clinton in Hot Springs at the 1974 Arkansas Democratic Convention, when Mr. Clinton was the Democratic nominee for Congress for the Third District. See J. McDougal 4/2/97 GJ at 13; Jim McDougal & Curtis Wilkie, Arkansas Mischief 140 (1998).

[10] J. McDougal 4/2/97 GJ at 72.

[11] W. Clinton 7/22/95 Depo. at 42. President Clinton met Susan Henley shortly before she married Jim McDougal. W. Clinton 4/28/96 Depo. at 30, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark.). Mrs. Clinton said she had known Susan McDougal since the middle or late 1970s, through her husband's friendship with Jim McDougal. H. Clinton 5/24/95

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jointly owned.[12] Clinton purchased the land in an Arkansas development known as Saltillo Heights.[13] According to McDougal, Clinton borrowed $8,000 to finance the purchase.[14] When later questioned about it, President Clinton could not remember the details, but believed he made monthly payments.[15]

McDougal divided the property into three-acre tracts and made improvements.[16] By May 17, 1978, two months after Clinton had purchased his property, McDougal sold the lots.[17] Clinton's parcel netted him approximately $2,100,[18] which was reported on the Clintons' 1978 tax returns.[19]

The Saltillo Heights transaction proved significant for two reasons. First, the venture's success influenced Clinton's decision to form the Whitewater partnership and corporation with

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RTC Interrog. Resp. at 75.

[12] J. McDougal 4/2/97 GJ at 15-16; W. Clinton 4/28/96 Depo. at 10-11, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark.); see also W. Clinton 4/22/95 Depo. at 10-13.

[13] J. McDougal 4/2/97 GJ at 15-16; J. McDougal 9/96 Int. at 1. See W. Clinton 4/22/95 Depo. at 10-13.

[14] J. McDougal 4/2/97 GJ at 61-62. The purchase agreement said Clinton made a down payment. See Purchase Agreement (Saltillo Heights) (Doc. Nos. DEK002225 through 26). But see Letter from Jim McDougal to Bill Clinton (Feb. 4, 1977) (Doc. No. DEK002222). The following week, however, McDougal wrote Clinton: "Between now and April 1st please mail us your down payment of $400.00 - If you have it to spare." Id. There was no evidence that Attorney General Clinton ever made the payment.

[15] W. Clinton 4/22/95 Depo. at 11.

[16] J. McDougal 4/2/97 GJ at 63.

[17] W. Clinton 5/24/95 Interrog. Resp. at 3; J. McDougal 4/2/97 GJ at 63.

[18] W. Clinton 4/28/96 Depo. at 10-11, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark.); see also W. Clinton 5/24/95 Interrog. Resp. at 3; J. McDougal 4/2/97 GJ at 61 ("I have read that he made about $2,000 and that sounds about right").

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the McDougals by confirming Clinton's belief that McDougal could construct successful real estate ventures.[20] Clinton was satisfied with the money he made on the deal, which he called a "nice profit."[21] Second, McDougal opened an account in 1978 to receive the mortgage payments from Attorney General Clinton's Saltillo Heights lot sales, which he (McDougal) later used for a loan he took out in Bill Clinton's name at Madison Guaranty in 1982.[22]

2. The Clintons and the McDougals Formed the Whitewater Partnership in 1978.

In 1978, Chris Wade, a real estate agent in Flippin, Arkansas, told McDougal a large tract of land was available along the White River in Marion County, in the north-central part of Arkansas.[23] Marion County was considered a prime development area for vacationers from the Midwest and the South.[24] Shortly after learning about the land, McDougal ran into the Clintons

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[19] W. Clinton 5/24/95 RTC Interrog. Resp. at 3.

[20] Id. McDougal was also of the belief that the Saltillo Heights transaction probably served to reinforce Attorney General Clinton's trust in him as a real estate developer. J. McDougal 9/96 Int. at 1.

[21] W. Clinton 4/28/96 Depo. at 10-11, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark.).

[22] The trustee account was set up by Susan McDougal to collect mortgage payments from the Clinton-owned Saltillo Heights lot sales, so that the lot payments could pay off the loan Attorney General Clinton used to buy the land. J. McDougal 4/2/97 GJ at 53-54, 62; J. McDougal 8/96-6/97 Int. at 30. As discussed infra, McDougal used this then dormant account, along with the $25,000 Wade nominee loan, to pay the principal and interest due on the $27,600 Madison Guaranty loan made in Bill Clinton's name.

[23] J. McDougal 9/96 Int. at 1.

[24] See W. Clinton 5/24/95 Interrog. Resp. at 4-5; Statement of Hillary Clinton, Whitewater Press Conference (Apr. 22, 1994).

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and invited them to join him as partners.[25] The Clintons, pleased with the Saltillo Heights profits, agreed.[26]

On June 15, 1978, McDougal purchased for himself and the Clintons 230.24 acres of the Marion County land.[27] The purchase price was $202,999.10, or $881.68 per acre. The Clintons and the McDougals planned to divide the property into lots to sell as vacation home sites.[28] They named the development "Whitewater Estates" because of the White River frontage.[29]

The Clintons and the McDougals never executed a written agreement about their obligations to the partnership, but rather shared an oral understanding about their personal obligations.[30] All four partners believed they had an equal ownership interest in the 230.24 acres of land.[31] The Clintons "would share equally with the McDougals in expenses and profits."[32]

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[25] J. McDougal 9/96 Int. at 2.

[26] Id.

[27] Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation at 15 (Apr. 24, 1995).

[28] Map of Whitewater Development (undated) (Doc. No. 53-00000005). See Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation at 15, 25 (Apr. 24, 1995); see also David Maraniss, First In His Class 374 (1995).

[29] J. McDougal 4/2/97 GJ at 16.

[30] W. Clinton 5/24/95 RTC Interrog. Resp. at 5-6 ("Our agreement with Jim and Susan McDougal about the financing of the Whitewater project was oral and not formalized by a writing").

[31] Wade, who had first alerted McDougal about the availability of the 230.24-acre tract and who also served on the board of Citizens Bank, testified that "they took title to it as Bill and Hillary and Jim and Susan, I believe." Wade 4/12/94 GJ at 43-44.

[32] W. Clinton 5/24/95 RTC Interrog. Resp. at 6 ("There was no particular definition of, nor limitation on, our financial commitment to the project, except that we anticipated that we

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Finally, "any inequalities [in the respective contributions of the Clintons and the McDougals] ultimately would be evened out from revenues of the venture or when the venture was sold."[33]

3. The Whitewater Development Company Was Incorporated to Develop the Marion County Land in 1979.

On June 18, 1979, accountant Charles James incorporated Whitewater Development in the state of Arkansas.[34] McDougal did not consult with the Clintons on the incorporation decision.[35] The McDougals and the Clintons conveyed all assets to the new corporation on September 30, 1979.[36]

Jim McDougal capitalized Whitewater Development with 1,000 shares of stock at $1 per

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would share equally with the McDougals in expenses and profits"); see also J. McDougal 4/2/97 GJ at 79.

[33] W. Clinton 5/24/95 RTC Interrog. Resp. at 7.

[34] James 10/16/96 GJ at 15, 18. Whitewater Development was incorporated:

> (a) to engage in the business of owning, selling, developing, managing, and improving real property; (b) to purchase or in any way acquire for investment or for sale, or otherwise, lands, contracts for the purchase or sale of lands, buildings, improvements, and any other real or personal property of any kind; and to sell, lease, convey, mortgage or otherwise deal with all or any part of the real or personal property of the corporation; (c) to acquire, promote, construct, operate, or manage residential, multi-family or commercial enterprises or any other improvements with the development of any real properties in which the corporation may have an interest; (d) to conduct any other business enterprise not contrary to law; (e) to exercise all of the powers enumerated in Section 4 of the Arkansas Business Corporation Act.

Whitewater Development Articles of Incorporation (June 18, 1979) (Doc. Nos. 70-00000020 through 24).

[35] J. McDougal 9/96 Int. at 4-5.

[36] See Warranty Deed (Sept. 30, 1979) (Doc. Nos. 70-00000025 through 27). The deed was recorded on December 19, and filed on December 28, 1979. Id.

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share with the fiscal year ending May 31, 1980.[37] McDougal originally intended to make Mrs. McDougal and Mrs. Clinton the sole shareholders, though the evidence was unclear about how the shares were divided.[38] The Clintons' and McDougals' understanding remained that Whitewater was a fifty-fifty arrangement,[39] so that profits and expenses would be shared equally.[40]

4. Whitewater's Lot Sales Were Sluggish.

a. Chris Wade of Ozarks Realty Conducted Much of the Marketing and Sales.

The Clintons relied on the McDougals to oversee Whitewater's sales, marketing, and development.[41] Jim McDougal hired Ozarks Realty Company, a small real estate brokerage Chris

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[37] A Whitewater general ledger allocated the capital stock equally amongst the four partners. See Whitewater General Ledger (as of May 31, 1980) (Doc. Nos. DEK000218 through 19).

[38] J. McDougal 9/96 Int. at 5. Charles James, the accountant for Whitewater Development, testified that he believed that Mrs. Clinton and Susan McDougal were the original shareholders. James 10/16/96 GJ at 22-23. The Clintons do not believe they received share certificates when Whitewater Development was incorporated. H. Clinton 5/24/95 RTC Interrog. Resp. at 58.

[39] According to Mrs. Clinton, "the ownership of the corporation was 50/50." Statement of Hillary Clinton, Whitewater Press Conference (Apr. 22, 1994); see also W. Clinton 5/24/95 RTC Interrog. Resp. at 7.

[40] W. Clinton 5/24/95 RTC Interrog. Resp. at 6.

[41] Id. at 9 ("I do not recall that we ourselves had any particular agreement, expectation, or understanding with respect to such things as the prices of lots, the terms on which lots would be sold, the methods by which the lots would be marketed, how much money would be spent on marketing, the size of down payments, who would be the broker, the method of computing commissions, and the size of commissions"). Id.

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Wade operated, to do this.[42] Wade arranged for surveys, roads to be cleared, and gravel to be laid where needed.[43] The 230.24-acre Whitewater property was subdivided into forty-four lots.[44] A problem with the original survey, however, caused a delay of approximately one year before lots could be marketed.[45] McDougal believed this delay hurt sales, because interest rates rose and real estate sales fell by the time Whitewater lots could be sold.[46]

Ozarks Realty conducted most of the marketing and sales.[47] From 1978 to 1992, Ozarks Realty or Wade received between $72,998 and $79,519 in commissions and other payments for Whitewater-related work.[48]

After a Whitewater lot was sold, the proceeds were to be deposited into Ozarks Realty's real estate trust account.[49] After the closing, any funds left over were then deposited into Whitewater Development's checking account at Citizens Bank & Trust ("Citizens Bank") in Flippin, Arkansas.[50] The shareholders envisioned that the funds deposited into this escrow

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[42] J. McDougal 4/2/97 GJ at 38.

[43] Wade 4/12/94 GJ at 89-90.

[44] W. Clinton 5/24/95 RTC Interrog. Resp. at 9.

[45] J. McDougal 9/96 Int. at 4.

[46] Id.

[47] J. McDougal 9/96 Int. at 3; Wade 3/17/95 Int. at 8; see also Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation at 23-24 (Apr. 24, 1995).

[48] See Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation at 23-24 (Apr. 24, 1995).

[49] Wade 3/30/95 Int. at 8.

[50] Wade 6/7/94 GJ at 18; Wade 3/30/95 Int. at 8.

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account would be used to service the debt on Citizens Bank loan no. 5885, which had been taken out to finance purchase of the property.[51] Mrs. Clinton "assumed that the revenues from the escrow contracts were being used for these purposes."[52]

b. Jim McDougal Exchanged the Remaining Whitewater Lots with Chris Wade for a Piper Seminole Airplane in 1985.

By May 1985, only twenty of the forty-four Whitewater lots were under contract for deed.[53] Frustrated, McDougal told Wade he was "tired of messing with Whitewater" and asked Wade to buy the unsold lots.[54] Wade owned a part of Ozark Air Services ("Ozark Air"), a small airline charter service.[55] McDougal originally wanted $75,000 cash for the lots,[56] but Wade offered to trade one of Ozark Air's airplanes -- a 1979 Piper Seminole -- for the lots.[57] McDougal agreed,[58] and the transaction was completed on May 4, 1985.[59] McDougal did not consult with Governor or Mrs. Clinton,[60] and the Clintons said that they did not learn about the exchange until

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[51] See Strange 5/12/94 GJ at 29.

[52] H. Clinton 5/24/95 RTC Interrog. Resp. at 49.

[53] J. McDougal 9/96 Int. at 9.

[54] Wade 4/12/94 GJ at 107-11.

[55] Id.

[56] Wade 3/30/95 Int. at 11.

[57] Wade also agreed to make $35,000 in payments on the 1978 loan at Citizens Bank. Wade 4/12/94 GJ at 111; see also J. McDougal 9/96 Int. at 9.

[58] J. McDougal 9/96 Int. at 9. McDougal sold the airplane to Seth Ward, Webster Hubbell's father-in-law. Ward obtained approximately $13,000 from Madison Financial Corporation, a subsidiary of Madison Guaranty created to handle real estate transactions, to pay for the additional expenses associated with Ward's airplane purchase and subsequent sale. Id.

[59] See Security Release Agreement (May 4, 1985) (Doc. Nos. 70-00000114 through 15).

[60] J. McDougal 9/96 Int. at 9. President Clinton testified that McDougal did not consult

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1986.[61]

5. The Clintons Ended Their Relationship with Whitewater in December 1992 by Selling Their Remaining Whitewater Shares to Jim McDougal.

The Clintons and members of the presidential transition team initiated the Clintons' divestment from Whitewater.[62] James Blair, a Clinton friend who had helped with the presidential campaign, negotiated the Clintons' sale of their remaining interest.[63] Blair testified:

> I set out to extricate them from Whitewater, and decided the best way to do it was to persuade McDougal to buy them out for a nominal sum. He couldn't buy them out for more than a nominal sum because he didn't have any money, and it probably wasn't worth any money. So if he had any money, he probably wasn't going to give it anyhow for that. So I talked to [Sam] Heuer [Jim McDougal's attorney]. There was a little trickle of money that came from some escrow contracts that were still being paid on where some of the Whitewater lots had been sold, and it was worth something to him. And so Heuer and McDougal eventually agreed they would buy out the Clintons for the sum of $1,000. And I either prepared or I talked to Vince [Foster] and had Vince type out a very simple transaction, transferring their stock.[64]

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with him before the transfer of the lots, nor did McDougal tell him that all of the Whitewater lots had been sold or transferred when they renewed the Citizens Bank loan in the fall of 1985. W. Clinton 4/28/96 Depo. at 81-84, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark.). Mrs. Clinton said in her Interrogatory Responses to the RTC that McDougal told her in 1986 that the remaining Whitewater lots had been sold to Wade the previous year. H. Clinton 5/24/95 RTC Interrog. Resp. at 28.

[61] H. Clinton 5/24/95 RTC Interrog. Resp. at 28; W. Clinton 5/24/95 RTC Interrog. Resp. at 27.

[62] Blair 12/7/95 GJ at 99. Questions about the Clintons' relationship with Whitewater had been raised during the 1992 campaign. Blair told the grand jury that Loretta Lynch and Susan Thomases strongly felt, as he did, that the Clintons needed to be out of Whitewater. Blair 12/7/95 GJ at 99.

[63] H. Clinton 6/12/94 Fiske Depo. at 26.

[64] Blair 12/7/95 GJ at 99.

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Mrs. Clinton stated she knew about Blair's efforts,[65] but President Clinton stated he did not.[66]

When Blair was unable to attend the closing, Vince Foster took his place.[67] Mrs. Clinton knew Foster was involved in their divestment from Whitewater and knew that her tax counsel and accountant had consulted Foster about the transaction.[68] The closing agreement, drafted by Blair and Foster, made the Clintons responsible for preparing the Whitewater corporate tax returns and required them to give all corporate records to McDougal within ninety days.[69]

On December 22, 1992, the Clintons formally severed all economic ties with the Whitewater corporation.[70] McDougal did not have the necessary $1,000 to purchase the stock, so Blair provided the money by writing a check to Sam Heuer's trust account, which then disbursed a check to the Clintons.[71] McDougal testified he was unaware Blair had provided the funds, and

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[65] H. Clinton 6/12/94 Fiske Depo. at 26.

[66] W. Clinton 6/12/94 Fiske Depo. at 40.

[67] Blair 12/7/95 GJ at 99.

[68] H. Clinton 7/22/95 Depo. at 6-7.

[69] Letter from Vincent J. Foster Jr. to Yoly Redden, Clinton's accountant (Dec. 23, 1992) (Doc. Nos. DEK004357 through 59). Foster, on the Clinton's behalf, offered to have Yoly Redden, the Clinton's accountant, and her firm prepare the returns. Id.; see also W. Clinton 6/12/94 Fiske Depo. at 11; J. McDougal 4/3/97 GJ at 53-54. On June 16, 1993, McDougal called Foster at the White House leaving a message that he was calling about the Whitewater tax returns. This call was not returned, but a few days later, McDougal received the prepared tax returns in the mail, unaccompanied by the corporate records. Id. at 55-56. Letter from Yoly Redden, Clinton's accountant, to James Blair (June 23, 1993) (Doc. No. DEK009076). The letter reflected that those returns were completed and about to be filed.

[70] Blair 2/19/96 Senate Whitewater Comm. Depo. at 69, 84.

[71] Check No. 0166 from the account of Sam Heuer payable to Bill and Hillary Clinton for $1,000.00 (Dec. 24, 1992) (Doc. No. DEK004365). At the time of the sale, Heuer was representing McDougal as counsel.

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consequently never repaid him or anyone else for the $1,000 stock purchase.[72]

B. While the Clintons Were Owners of Whitewater, Ten Loans, Many Interrelated, Were Taken Out in the Name of, or which Conferred a Benefit on, the Whitewater Partnership and/or Corporation.

Revenues from Whitewater lot sales were rarely sufficient to keep up with loan payments, development costs, and other expenses. The Clintons and the McDougals personally loaned the corporation money, and the corporation borrowed money from various financial institutions.[73] In all, ten loans were taken out in the name of, or which conferred some benefit on, the Clinton/McDougal Whitewater partnership or corporation. These ten loans were:

1) Union National Loan No. 4197 made to William J. Clinton and James B. McDougal (June 19, 1978);

2) Citizens Bank Loan No. 5885 made to William J. Clinton, Hillary Rodham, James B. McDougal and Susan McDougal (August 2, 1978);

3) Bank of Cherry Valley Loan No. 25997 (and successor loans) made to James B. McDougal (June 19, 1980);

4) Bank of Kingston/Madison Bank & Trust Loan No. 23039 made to Hillary Rodham (December 16, 1980);

5) Madison Bank and Trust Loan No. 23337-01 made to Whitewater Development (August 14, 1981);

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[72] J. McDougal 4/3/97 GJ at 52-53. McDougal testified that he was asked during a television interview about Blair and the funding of the stock purchase: "I said on the program, 'Well, I never paid it. I never had $1,000.' And, you know, he said, 'Did Jim Blair loan you a thousand?' I said, 'No. I never paid the thousand, period.' And almost immediately, I got a call from Sam [Heuer]. He was sort of frantic. And he said, 'Well, Jim [Blair] is down --' and I thought he meant right then, '-- testifying before a committee in Congress that he loaned you the thousand.' And I said, 'You know, when you guys are making these stories up, you need to let me in on it because I didn't know that.'" Id.

[73] J. McDougal 4/2/97 GJ at 38.

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6) Security Bank Loan No. 957-585 (and successor loan) made to Bill Clinton (September 30, 1982);

7) Citizens Bank Loan No. 10295 made to Whitewater Development (November 1, 1982);

8) Madison Guaranty Savings & Loan Cashier's Check No. 924 made payable to "Bill Clinton" (November 15, 1982);

9) Capital Management Services Loan made to Susan McDougal d/b/a Master Marketing (April 3, 1986); and

10) International Paper Real Estate Note and Mortgage signed by Jim McDougal and Susan McDougal on behalf of Whitewater Development (October 10, 1986).

The repayment history for these loans appears in Appendix 2 of this Volume.

1. The Clintons and the McDougals Took Out Two Loans from Two Arkansas Banks in 1978 to Purchase the Land.

Two Arkansas banks, Union National Bank ("Union National") of Little Rock and Citizens Bank & Trust ("Citizens Bank") of Flippin loaned the funds for the initial $203,000 Whitewater purchase price.[74] McDougal said he did not discuss with anyone his decision to borrow all the money for the purchase, including the down payment.[75] McDougal felt this was unnecessary, as he had made numerous real estate purchases before with one hundred percent

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[74] Union National Loan No. 4197 and Citizens Bank Loan No. 5885 accounted for $202,611.20 of the purchase price. Records do not show where the remaining $388.80 came from. Union National Bank of Little Rock participated in 50% of the Citizens Bank loan, purchasing $91,305.60 of the $182,611.20. See Certificate of Participation (Aug. 2, 1978) (Doc. No. 70-00000006).

[75] J. McDougal 9/96 Int. at 2.

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financing.[76]

The Clintons were personally liable on these two loans, but their exceeding belief that the financing would be secured by the real estate itself, and that the personal exposure of the four partners would be limited, influenced their decision to enter into the venture.[77] Jim McDougal assured the Clintons he could quickly sell enough lots to make the project self-financing.[78]

a. The $20,000 Loan from Union National Bank in Little Rock for the Down Payment.

The Clintons and the McDougals borrowed the $20,000 down payment from Union National in Little Rock on June 19, 1978.[79] Jim McDougal negotiated the terms, conditions, and origin of the loan.[80] Recorded as no. 4197, the loan took the form of a one-year note, which Attorney General Clinton and Jim McDougal signed.[81] The loan was renewed on June 19, 1979, September 17, 1979, and December 17, 1979. Payments from McDougal's personal account from Great Southern, another company McDougal operated, and from Whitewater Development,

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[76] Id. at 2-3.

[77] W. Clinton 5/24/95 RTC Interrog. Resp. at 5; W. Clinton 7/22/95 Depo. at 66.

[78] W. Clinton 5/24/95 RTC Interrog. Resp. at 5-6.

[79] See Union National Bank of Little Rock Promissory Note No. 4197 (June 19, 1978) (Doc. Nos. GS-00014383 through 84). The loan was extended for an additional year on June 19, 1979.

[80] J. McDougal 9/96 Int. at 3 (stating that McDougal believed he handled the application and procurement of the $20,000 loan and that Bill Clinton did not have anything to do with the loan). But see Paul C. Berry 5/10/96 Senate Whitewater Comm. Depo. at 18-19 (claiming that Governor Clinton, and not McDougal, originated the loan).

[81] See Union National Bank of Little Rock Promissory Note No. 4197 (June 19, 1978) (Doc. Nos. GS-00014383-84).

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serviced the loan.[82]

To pay off Union National loan no. 4197, Jim McDougal personally borrowed $20,000 on June 19, 1980 from the Bank of Cherry Valley, which he deposited into a Whitewater Development account the next day.[83] President Clinton did not remember when the Union National loan was retired,[84] but did remember that the loan shifted to the Bank of Cherry Valley.[85] The Clintons regarded the loan as an acquisition loan for which they and the McDougals were personally liable.[86] President Clinton remembered that McDougal handled the servicing of the loan.[87]

Union National loan no. 4197 was paid on June 23, 1980, by Whitewater Development, using funds from the Bank of Cherry Valley loan no. 25997.[88] From April 1981 until September

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[82] Union National Bank of Little Rock Statement of Whitewater Development account (5/30-6/30/80) (Doc. No. GS-00014674); see also Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation at 28 (Apr. 24, 1995).

[83] Purchaser's receipt no. 10043 from Bank of Cherry Valley to Jim McDougal in the amount of $20,000.00 (June 19, 1980) (Doc. Nos. GS-00014672); Deposit slip from Jim McDougal to Union National Bank in the amount of $20,000.00 (June 20, 1980) (Doc. No. GS-00014673); Union National Bank of Little Rock Statement of Whitewater Development account (5/30-6/30/80) (Doc. No. GS-00014674); see also Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation at 30 (Apr. 24, 1995).

[84] W. Clinton 3/31/95 Interrog. Resp. at 16.

[85] Id.

[86] Id. at 13. The reconstructed loan repayment schedule for Union National Loan No. 4197 and for Bank of Cherry Valley Loan No. 25997 and successor loans may be found in Appendix 2 of this Volume.

[87] W. Clinton 3/31/95 Interrog. Resp. at 16.

[88] See Loan No. 25997 Debit Sheet (June 19, 1980) (Doc. No. 204-00000158); see also

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1984, the Bank of Cherry Valley loan was refinanced several times, resulting in new notes with new loan numbers.[89] To make the payments, Jim McDougal used the funds of the subsequent loan to pay the amounts due on the prior note.[90] A payment from Whitewater Development finally retired the loan on January 4, 1985.[91]

b. The Clintons and the McDougals Took Out a $182,611.20 Loan from Citizens Bank & Trust in Flippin to Finance the Remaining Purchase Price.

i. Citizens Bank & Trust Loan No. 5885.

The Clintons and the McDougals borrowed $182,611.20 on August 2, 1978, in the form of a sixth month mortgage,[92] recorded as loan no. 5885,[93] from Citizens Bank in Flippin,

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Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation at 30 (Apr. 24, 1995).

[89] Denton 5/7/96 Senate Whitewater Comm. Depo. at 59, 62-63.

[90] Bank of Cherry Valley Loan No. 25997 was repaid with Loan No. 26731 on April 13, 1981; Loan No. 26731 was repaid with Loan No. 27572 on April 13, 1982; Loan No. 27572 was repaid with Loan No. 27851 on August 12, 1982; Loan No. 27851 was repaid with Loan No. 28262 on July 7, 1983; Loan No. 28262 was repaid with Loan No. 28861 on June 20, 1984; Loan No. 28861 was repaid with Loan No. 28997 on September 12, 1984; and Loan No. 28997 was satisfied after payment by Whitewater Development on January 9, 1985. See Appendix 2 of this Volume for a detailed accounting of payments.

[91] Check No. 000128 from the account of White Water Development Corporation Incorporated signed by James McDougal payable to the Bank of Cherry Valley for $5,071.23 (Jan. 4, 1985) (Doc. No. DEK501631); Endorsement of Check No. 000128 from the account of White Water Development Corporation Incorporated signed by James McDougal payable to the Bank of Cherry Valley for $5,071.23 (Jan. 4, 1985) (Doc. No. DEK501632); see also Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation at 67 (Apr. 24, 1995).

[92] See Mortgage with Power of Sale, signed by the McDougals and Clintons (Aug. 2, 1978) (Doc. No. 70-00000014). The loan was originally scheduled to mature on June 19, 1979, but was renewed a number of times after its original maturation date. See, e.g., Citizens Bank

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Arkansas.[94] All four partners personally signed as guarantors.[95] The real estate itself secured the loan and the mortgage, and expressly held the four principals personally liable for any deficiency if foreclosure and sale of the land proved insufficient to pay any amount outstanding.[96] If Whitewater Development failed to generate sufficient revenue to satisfy Citizens Bank loan no. 5885, and one of the McDougals or the Clintons had to pay off more than his or her proportionate one-fourth share of the loan deficiency, then the other three loan co-signers "would be obligated to pay their individual share of any deficiency disproportionately paid by the one [who had to overpay]."[97]

According to testimony, the Clintons understood the scope of their liability. Mrs. Clinton testified that both she and her husband were liable on the Citizens Bank note until its satisfaction in 1992.[98] Jim McDougal told the grand jury, "it didn't make any difference if we borrowed as individuals or in the corporation. Either way, if the corporation borrowed it, we had to stand

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Loan No. 5885 Extension Agreement (Nov. 11, 1979) (Doc. No. 70-00000028).

[93] See Citizens Bank, Flippin, Arkansas Promissory Note No. 05885 (Aug. 2, 1978) (Doc. No. MGSL-FR-00000002). Flippin was the closest town to the Whitewater property.

[94] See id.

[95] Id.

[96] W. Clinton 5/24/95 RTC Interrog. Resp. at 6-7.

[97] Id. at 15.

[98] H. Clinton 4/25/98 GJ at 11-12; see also Statement of Hillary Clinton, Whitewater Press Conference (Apr. 22, 1994) ("The liability on the underlying debt was 100 percent for each one of us. I mean there was not gift in that. When my husband and I signed that mortgage and when we resigned guarantees, we assumed the whole responsibility. I mean, if Jim had gone into bankruptcy early on, if Susan had left, we would not have only 50 percent of the obligation, we would have 100 percent of the obligation").

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good for it as individuals."[99]

On August 6, 1979, Citizens Bank notified the Clintons and the McDougals that the balance of loan no. 5885 was due on August 5, 1980.[100] The bank offered the option of annual renewals subject to a ten percent yearly reduction on the principal loan amount.[101] On November 9, 1979, Jim McDougal and Governor Clinton signed an agreement with the bank, which extended the loan until August 5, 1981.[102] Citizens Bank refinanced the loan with similar renewal and modification agreements nine times, until it was paid off in 1992.[103]

In 1983, TC Bancshares purchased Citizens Bank and renamed it 1st Ozark National Bank ("1st Ozark"). The purchase converted the bank to a national charter institution, subjecting it to examination by federal regulators.[104] The Clintons and McDougals continued to renew the

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[99] J. McDougal 4/3/97 GJ at 39.

[100] See Letter from Frank Burge, President of Citizens Bank, to James and Susan McDougal and Bill and Hillary Clinton (Aug. 6, 1979) (Doc. No. DEK007656).

[101] Id.

[102] See Extension Agreement (Nov. 9, 1979) (Doc. No. 70-00000028). The Independent Counsel was unable to determine as to why the letter sent by Citizens Bank noted that the loan matured on August 5, 1979 but the extension agreement was not entered into until three months later.

[103] See Extension and Modification Agreement, applicants Bill Clinton and James B. McDougal (Aug. 5, 1980) (Doc. No. DEK002853); Extension and Modification Agreement applicants Bill Clinton, Hillary Rodham, James B. McDougal, and Susan H. McDougal (Aug. 5, 1981) (Doc. No.70-00000047); Extension and Modification Agreement applicants Bill Clinton, Hillary Rodham, James B. McDougal, and Susan H. McDougal (Nov. 1, 1982) (Doc. No. 70-00000067). See Appendix 2 of this Volume for a complete history of the loan's extension schedule.

[104] Proctor 9/27/94 GJ at 34.

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original Citizens Bank loan through 1st Ozark.[105]

In October 1983, 1st Ozark Vice President Ron Proctor was assigned loan no. 5885, previously the responsibility of the bank's president.[106] Proctor discovered that the pay down schedule was irregular.[107] Proctor knew Whitewater Development faced high interest rates and a deteriorating real estate market[108] and was concerned about Jim McDougal's management of the subdivision.[109] 1st Ozark's loan committee met on October 5, 1983 and decided that, despite missed payments and other concerns, McDougal's net worth warranted an extension agreement.[110] The loan committee also felt "safer with the loan because of the Governor's signature."[111]

On October 30, 1984, Jim McDougal wrote Proctor that the partners were unable to make the required principal reduction, enclosed a check for $18,000, and promised $6,000 within thirty days.[112] This constituted the first significant principal reduction made on loan no. 5885 "in quite some time."[113] Proctor assumed that the funds came from sources other than lot sales.[114]

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[105] Id. at 7-8.

[106] Id. at 8, 13-14.

[107] Id. at 12-13.

[108] Id. at 21-22.

[109] Id. at 22.

[110] Id. at 20.

[111] Id.

[112] Id. at 32.

[113] Id. at 23.

[114] Id. at 24. Proctor based his assumption on the status of Whitewater Development's accounts, also held at 1st Ozark, which did not have the funds to cover the amount paid. Id. Proctor said "[t]he $18,000 payment smoothed a lot of the problems." Id. at 32.

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First Ozark became more insistent on requiring the McDougals and the Clintons to submit current financial statements in order to comply with federal regulations.[115] The financial statements were generally incomplete and received late.[116] 1st Ozark then said it would permit extensions and modifications with the McDougals and the Clintons only on receipt of current, accurate, and completed financial statements.[117]

A payment from Chris Wade's company, Ozark Air -- the result of McDougal having sold the remaining lots to Wade in exchange for an airplane in May, 1985 -- retired the Citizens Bank loan on May 12, 1992.[118] Over its history, payments from the following sources serviced the loan: Jim and Susan McDougal's personal account, Bill Clinton and Hillary Rodham's personal account, Whitewater Development, Chris Wade and/or Ozark Air, Flowerwood Farms and Rolling Manor (two additional companies operated by the McDougals), and when possible, various lot sale proceeds or escrow payments.[119] A second loan taken out at Citizens Bank in 1982, discussed below, which covered the mounting overdue interest, also serviced the loan.[120]

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[115] Id. at 29-30.

[116] Id. at 30, 33-34.

[117] Id. at 40-41.

[118] Id. at 116-17.

[119] See Appendix 2 of this Volume for a detailed accounting of loan no. 5885 payments.

[120] Proctor 9/27/94 GJ at 16-17, 28.

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ii. Citizens Bank & Trust Loan No. 10295.

On November 1, 1982, the Clintons and the McDougals, doing business as Whitewater Development, took out loan no. 10295 from Citizens Bank for $20,000[121] to pay the overdue interest on Citizens Bank loan no. 5885, the original acquisition mortgage loan.[122] Under the terms of the agreement, the purpose of the loan, which was required to be disclosed, was stated as "advance of funds for Whitewater Develop. Co."[123]

Neither President nor Mrs. Clinton remembered this loan,[124] why it was obtained, what it was used for, or whether it was ever repaid.[125] The Clintons co-signed with the McDougals personally, although neither was certain that the signature appearing on the copy they were shown was theirs.[126] The Clintons thought they might have signed for the loan at Jim McDougal's request, but neither could remember.[127]

The balance of the loan was paid October 20, 1983.[128] Proctor, assigned both Citizen

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[121] Id. at 65.

[122] R. Ritter 2/8/95 GJ at 35; see Loan Agreement No. 10295 from Citizens Bank and Trust Company to Whitewater Development (Nov. 1, 1982) (Doc. No. 70-00000079).

[123] Loan Agreement No. 10295 from Citizens Bank and Trust Company to Whitewater Development (Nov. 1, 1982) (Doc. No. 70-00000079).

[124] W. Clinton 5/24/95 RTC Interrog. Resp. at 25; H. Clinton 5/24/95 RTC Interrog. Resp. at 25.

[125] W. Clinton 5/24/95 RTC Interrog. Resp. at 25; H. Clinton 5/24/95 RTC Interrog. Resp. at 25.

[126] W. Clinton 5/24/95 RTC Interrog. Resp. at 25; H. Clinton 5/24/95 RTC Interrog. Resp. at 25-26.

[127] W. Clinton 5/24/95 RTC Interrogatory Reponses at 25; H. Clinton 5/24/95 RTC Interrogatory Reponses at 25.

[128] Check No. 000111 from the account of White Water Development Corporation

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Bank loans for the bank, nevertheless testified he did not know of any relationship between the two loans.[129] Proctor said if he had known the Clintons and McDougals were borrowing money so they could pay interest on the original loan, he would have viewed the propriety of the second loan less favorably.[130]

2. Hillary Rodham Took Out a $30,000 Loan from the Bank of Kingston/Madison Bank & Trust in 1980 to Build a Model Home on Whitewater Lot 13.

a. Bank of Kingston/Madison Bank & Trust Loan No. 23039.

In 1980, Jim McDougal built a model home on one of Whitewater's interior lots -- Lot 13 -- to spur overall sales.[131] When McDougal asked the Clintons to help, Mrs. Clinton agreed to take out a loan.[132] She later could not remember the details of the transaction.[133] She did remember, however, that the corporation would receive the loan proceeds, which would be used to build the model home.[134]

Incorporated signed by Susan McDougal payable to Citizens Bank of Flippin for $18,455.34 (Oct. 14, 1983) (Doc. No. DEK501566); Endorsement of Check No. 000111 from the account of White Water Development Corporation Incorporated signed by Susan McDougal payable to Citizens Bank of Flippin for $18,455.34 (Oct. 14, 1983) (Doc. No. DEK501567); see also Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation at 53-54 (Apr. 24, 1995).

[129] Proctor 9/27/94 GJ at 16.

[130] Id. at 28.

[131] J. McDougal 9/96 Int. at 5.

[132] H. Clinton 5/24/95 RTC Interrog. Resp. at 15-16.

[133] Id.

[134] Id.; see also H. Clinton 4/25/98 Depo. at 13-14.

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On December 16, 1980, the Bank of Kingston loaned Mrs. Clinton $30,000.[135] McDougal had purchased this bank in October 1980 and shortly thereafter renamed it Madison Bank & Trust.[136] Mrs. Clinton's loan carried an interest rate of twenty percent and was due on December 16, 1981.[137] Lot 13 secured this loan.[138]

The Clintons thought the corporation was responsible for the loan's repayment.[139] As they understood it, Whitewater Development would repay the Madison Bank loan from the lot sale proceeds and escrow payments.[140]

Mrs. Clinton anticipated that Lot 13 -- for which she was record owner -- would be sold

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[135] Loan Statement No. 23039, Bank of Kingston to Hillary Rodham (Dec. 16, 1980) (Doc. No. DEK502014).

[136] Bunch 1/20/98 GJ at 35.

[137] Loan Statement No. 23039, Bank of Kingston to Hillary Rodham (Dec. 16, 1980) (Doc. No. DEK502014); Disclosure form for Hillary Rodham (Dec. 16, 1980) (Doc. No. GS-00014419); see also Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation at 41 (Apr. 24, 1995).

[138] Warranty Deed of Tract 13 paid by Hillary Rodham in the amount of $10.00 (filed on Jan. 22, 1981) (Doc. No. DKRT900021).

[139] H. Clinton 5/24/95 RTC Interrog. Resp. at 17-18.

[140] Id. For instance, when the Clintons received a letter from Madison Bank dated August 5, 1982 stating that the monthly payments on the loan were insufficient, Mrs. Clinton conveyed via letter her "understanding that the [$30,000] loan has been paid out of proceeds from sales by the Whitewater Development Corporation," and that if there were to be increased monthly payments, "Mr. or Mrs. McDougal will have to authorize those increases." H. Clinton 5/24/95 RTC Interrog. Resp. at 18 (citing Doc. No. DKRT700318). The loan was repaid in full in October 1983 with proceeds from Governor Clinton's personal loan at Security Bank of Paragould. Id. Mrs. Clinton said that she did not know why the loan was shifted from Madison Bank to Security Bank. H. Clinton 5/24/95 RTC Interrog. Resp. at 21.

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quickly.[141] Because the corporation was responsible for marketing the real estate, it received the proceeds of the sale of Lot 13 and the model home, leaving Mrs. Clinton still liable on the note.[142] According to McDougal, Mrs. Clinton twice asked him whether the Clintons could deduct the interest payments on the $30,000 note on their personal income tax returns.[143] McDougal said he told her she could not claim an expense on her personal tax returns that the corporation paid, and that it had already been claimed as an expense on Whitewater's corporate tax returns.[144]

On April 15, 1983, Governor Clinton appointed Marlin Jackson as Bank Commissioner of the Arkansas State Bank Department.[145] Jackson soon learned that there were problems at Madison Bank.[146] In the fall of 1983, the Federal Deposit Insurance Company ("FDIC") and the Arkansas State Bank Department jointly issued a Cease and Desist Order to Madison Bank, ordering the institution, among other things, to stop making an inordinately high percentage of out-of-territory loans,[147] such as the loan to Mrs. Clinton to build on Whitewater Estates' Lot

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[141] H. Clinton 5/24/95 RTC Interrog. Resp. at 15-16.

[142] Id.

[143] J. McDougal 8/96-6/97 Int. at 32.

[144] J. McDougal 8/96-6/97 Int. at 32. McDougal said that Mrs. Clinton asked him the same question approximately a year later. Id.

[145] Jackson 9/18/96 GJ at 8.

[146] Jackson 9/18/96 GJ at 25-26.

[147] Jackson 9/18/96 GJ at 31-33. State regulations prohibited the bank from lending money to real estate projects outside its geographic boundaries. Hearings Relating to the Investigation of Whitewater Dev. Corp. and Related Matters Before the Senate Special Comm. to Investigate Whitewater Dev. Corp. and Related Matters of the Senate Comm. on Banking, Housing, and Urban Affairs, 104th Cong. 25-27 (Jan. 23, 1996) (testimony of W. Lyon) [hereinafter "Senate Whitewater Comm. Hearing"]. Whitewater was outside of this territory.

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13.[148]

b. Security Bank of Paragould Loan No. 957-585.

Marlin Jackson testified that he ran into Governor Clinton at the Capitol building shortly after meeting with the Madison Bank board of directors about the Cease and Desist Order.[149] Jackson told Governor Clinton that he had issued an "official appropriate document" against the Governor's "former staff members over at the Bank of Kingston."[150] Governor Clinton told Jackson to "do whatever is necessary to do a great job as bank commissioner and don't you worry about the politics of it."[151]

President Clinton said Jackson may have told him on "one or more occasions about regulatory action he had taken or was taking with regard to banks owned or operated by friends of supporters of mine."[152] President Clinton told Jackson to do what he considered appropriate, but had no more recollection on the matter.[153] Clinton said he did not learn about the FDIC Madison Bank Cease and Desist Order until he read the RTC's interrogatories.[154]

Jackson, however, testified that either in that conversation or in one within the next ten or fifteen days, Governor Clinton asked about "either Hillary's or his and Hillary's loan" at the

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[148] Jackson 9/18/96 GJ at 33-36; Jackson 11/7/94 Int. at 3.

[149] Jackson 9/18/96 GJ at 38-39.

[150] Id. at 39. Both Jim McDougal and fellow Bank of Kingston owner Steve Smith had been on Governor Clinton's staff in 1979.

[151] Id. at 40; Jackson 11/7/94 Int. at 3-4.

[152] W. Clinton 5/24/95 RTC Interrog. Resp. at 20.

[153] Id.

[154] Id.

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bank.[155] According to Jackson, he told Governor Clinton, "I just think it makes good sense for you to put some distance between yourself and a problem financial institution."[156] Jackson said he replied that he (Clinton) did not have any choice but to move the loan to another bank when it came due.[157] Jackson did not specifically remember suggesting that Governor Clinton move the loan to Security Bank of Paragould, where Jackson had served as president and chairman, but thought he likely included the bank in the ten or so banks he suggested.[158]

Jim McDougal remembered Jackson calling him at some point after the Arkansas State Bank Department criticized Madison Bank's loan to Mrs. Clinton, stating, "Since they've criticized that as being out of territory, we'd better move that loan over to the [Security] Bank of Paragould."[159] McDougal said he also received a call from Governor Clinton, who said, "Marlin Jackson said they criticized these loans and that I should move my loan over to his bank."[160]

In September 1983, Governor Clinton obtained a loan, recorded as no. 957-585, for $20,800 from Security Bank of Paragould.[161] Clinton said he did not remember why the loan was

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[155] Jackson 9/18/96 GJ at 40.

[156] Id. at 40-41.

[157] Id. at 40; Jackson 11/9/94 Int. at 3-4.

[158] Jackson 9/18/96 GJ at 42. Jackson testified that when he became Bank Commissioner, he placed all the stock his family owned in Security Bank into a blind trust. Jackson 9/18/96 GJ at 14-15.

[159] J. McDougal 4/2/97 GJ at 21.

[160] Id. at 21-22. McDougal told investigators that Governor Clinton later requested his help in the mechanics needed to transfer of the loan from Madison Bank to Security Bank. J. McDougal 9/96 Int. at 7.

[161] W. Clinton 5/24/95 RTC Interrog. Resp. at 20-21; Promissory Note No. 957-585 from Security Bank of Paragould to Bill Clinton for $20,800.00 (Sept. 30, 1983) (Doc. No. GS-

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shifted from Madison Bank to Security Bank.[162] Governor and Mrs. Clinton regarded this loan as the successor to the Bank of Kingston/Madison Bank loan, and a Whitewater Development corporate obligation.[163] The proceeds from the Security Bank loan satisfied Mrs. Clinton's Lot 13 model home loan at Madison Bank.[164]

Security Bank renewed the loan on September 30, 1984 and October 11, 1985.[165] On November 1, 1985, Bank Commissioner Marlin Jackson wrote to the vice president of Security Bank, enclosing the extension agreement Governor Clinton signed.[166] Jackson testified that Security Bank's senior credit officer asked him to get the Governor's signature on the extension agreement.[167] In the letter, Jackson said his understanding that "Jim McDougal, a close friend as well as business associate of Governor Clinton," was to forward a check for the interest then due on the note.[168]

The Clintons refinanced the loan on March 5, 1987, which was recorded as Security Bank

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00014477).

[162] W. Clinton 5/24/95 RTC Interrog. Resp. at 22.

[163] Id. at 20-21; H. Clinton 5/24/95 RTC Interrog. Resp. at 19.

[164] W. Clinton 5/24/95 RTC Interrog. Resp. at 20-21; H. Clinton 5/24/95 RTC Interrog. Resp. at 19.

[165] W. Clinton 5/24/95 RTC Interrog. Resp. at 37.

[166] Letter from Arkansas State Bank Department Bank Commissioner Marlin D. Jackson to Charles D. Campbell, Vice President, Security Bank (Nov. 1, 1985) (Doc. No. DEK20026).

[167] Jackson 9/18/96 GJ at 63.

[168] Letter from Arkansas State Bank Department Bank Commissioner Marlin D. Jackson to Charles D. Campbell, Vice President, Security Bank (Nov. 1, 1985) (Doc. No. DEK20026).

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loan no. 838-608.[169] In late 1988, the Clintons repaid the Security Bank loan in full by personally buying back Lot 13 (and the model house on it) out of the Bankruptcy Court and reselling it for $27,500.[170]

3. Jim McDougal Obtained a $30,000 Loan in Whitewater's Name from Madison Bank in 1981 That He Repaid through a Series of Fraudulent Transactions.

In August 1981, Madison Bank loaned Whitewater Development an additional $30,000,[171] recorded as loan no. 23337-01.[172] The following year, the FDIC said the loan violated Regulation O, a federal provision limiting loans made to corporations that a bank's directors owned.[173] The issue came up at a Madison Bank board of directors meeting on October 12, 1982, with FDIC regulators in attendance.[174] Susan McDougal also attended as a director of Madison Bank.[175]

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[169] W. Clinton 5/24/95 RTC Interrog. Resp. at 37. Both Governor and Mrs. Clinton were listed as "borrower" on the renewal note dated March 5, 1987. See Security Bank Loan Application for $14,117.59 in the name of Bill Clinton (Mar. 5, 1987) (Doc. Nos. 72-00000074 through 75); Promissory Note from Security Bank of Paragould to Bill and Hillary Clinton in the amount of $14,117.59 (Mar. 5, 1987) (DEK007546 through 47); W. Clinton 5/24/95 RTC Interrog. Resp. at 21. The reconstructed loan repayment schedule for the Security Bank loans may be found in Appendix 2 of this Volume.

[170] H. Clinton 5/24/95 RTC Interrog. Resp. at 23-24.

[171] J. McDougal 4/2/97 GJ at 38-39.

[172] Loan Agreement No. 23337-01 from Bank of Kingston to Whitewater in the amount of $30,000.00 (Aug. 1981) (Doc. No. GS-00014453).

[173] Minutes of Special Meeting of Board of Directors of Madison Bank and Trust, Kingston, Arkansas at 1, 3-4 (Oct. 12, 1982) (Doc. Nos. 79-0005645, 47, & 48). Regulation O applied to loans made to executive officers, directors, and principal shareholders of member banks. See Banks and Banking Federal Reserve System, 12 C.F.R. § 215 (1979).

[174] Minutes of Special Meeting of Board of Directors of Madison Bank and Trust, Kingston, Arkansas at 1 (Oct. 12, 1982) (Doc. No. 79-00005645).

[175] Id.

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Five days later, the board met again, and Jim McDougal agreed to move the Whitewater loan (the balance of which approximated $27,600) within the next thirty days.[176] Mrs. McDougal attended this meeting as well.[177]

Once Jim McDougal began cooperating with the Independent Counsel's investigation in 1997, he told investigators (and later the grand jury) that to repay Whitewater Development's Madison Bank loan, then-Governor Clinton took out a personal loan at Madison Guaranty.[178] In April 1997, McDougal testified before the grand jury that he had told then-Governor Clinton how the Whitewater loan was considered out of territory and how it was being counted against the McDougals' personal line of credit as long as it was related to Whitewater Development.[179] Governor Clinton, according to McDougal, agreed to assume the responsibility of taking out a new loan to get the Whitewater Development loan off the Madison Bank books.[180]

However, at the trial of Jim Guy Tucker and the McDougals in 1996, President Clinton

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[176] Minutes of Madison Bank and Trust Meeting of the Board of Directors at 4-5 (Oct. 17, 1982) (Doc. Nos.79-00005671 through 72). The relevant portion of the minutes read: "Another 30,000 is owned by a corporation owned by Bill Clinton, his wife, Susan, and myself. It will be moved within 30 days." Id.

[177] Minutes of Madison Bank and Trust Meeting of the Board of Directors at 1 (Oct. 17, 1982) (Doc. No.79-00005668) (noting that all directors with the exception of Dr. Austin Smith were present). The board met again on November 16, with no mention of the Whitewater loan being made. Minutes of Madison Bank and Trust Meeting of the Board of Directors (Nov. 16, 1982) (Doc. Nos. 79-00005633 through 35).

[178] J. McDougal 4/2/97 GJ at 43-44. See Letters from Independent Counsel Kenneth Starr to Sam Heuer, Attorney for Jim McDougal (July 30, 1996 and Aug. 8, 1996) (outlining cooperation agreement).

[179] J. McDougal 4/2/97 GJ at 41.

[180] Id. at 43-44.

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testified that he never borrowed any funds from Madison Guaranty:

Q. Mr. President, did you ever have any loan relationship with Mr. McDougal's savings and loan known as Madison Guaranty concerning your investments?

A. No, sir, I did not, I never borrowed any money from Madison Guaranty.

Q. Did you ever cause anybody to borrow any money for your benefit, Mr. President?

A. No, I did not.

Q. Did you ever have any personal loan with Madison Guaranty at any time, Mr. President?

A. No, sir, I didn't.[181]

Mrs. Clinton was also asked about her knowledge of this loan in a video taped deposition for the grand jury in April 1998. Mrs. Clinton testified that she was unaware of the loan and had never seen any documentation to support its existence.[182]

Through both documentary and testimonial evidence, the Independent Counsel confirmed that Jim McDougal obtained a loan in Bill Clinton's name at Madison Guaranty, and that the proceeds of this loan were used to repay Whitewater Development loan no. 23337-01 at Madison Bank. As discussed below, McDougal ultimately used a series of fraudulent nominee loans -- loans taken out in the name of someone else -- to repay the obligations this initial Madison Bank loan to Whitewater Development created. These transactions ultimately proved to be related to

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[181] W. Clinton 4/28/96 Depo. at 11, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark. 1996).

[182] H. Clinton 4/25/98 GJ at 14-15,19.

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the fraudulent $300,000 loan CMS made to Susan McDougal in 1986. There is, however, insufficient evidence to prove the Clintons knew about these transactions.

a. Madison Bank & Trust Loan No. 23337-01.

Although the stated purpose of the Madison Bank loan to Whitewater Development was for "Capital expenses," McDougal testified that the loan was taken out to make payments on the Citizens Bank acquisition loan.[183] Evidence confirmed that $15,902.11 of the loan proceeds were used to make an interest payment on the Citizens Bank acquisition loan, and an additional $1,300.00 was used to make an interest payment on McDougal's outstanding loan at the Bank of Cherry Valley.[184]

On November 12, 1981, Jim McDougal caused Whitewater Development Check No. 126, from the corporation's Bank of Kingston/Madison Bank account, to pay down the balance of the loan.[185] McDougal wrote the check in the amount of $4,553.40 and paid down the loan balance to

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[183] Loan Agreement No. 23337-01 from Bank of Kingston to Whitewater in the amount of $30,000.00 (Aug. 1981) (Doc. No. GS-00014453); Statement of Account No. 0001-040-5 (July 31-Aug. 31, 1981) (Doc. No. GS-00014463); Deposit ticket for Madison Bank and Trust in the amount of $30,000.00 (Aug. 14, 1981) (Doc. No.GS-00014464); Peat Marwick Work Papers from 1986 audit of Madison Guaranty (Doc. No. GS-00014464); J. McDougal 4/2/97 GJ at 43-44.

[184] Check No. 112 from the account of Whitewater Development Co. Inc. payable to Bank of Cherry Valley for $1,300.00 (June 1, 1981) (Doc. No. DEK002738); Check No. 115 from the account of Whitewater Development Co., Inc. signed by James B. McDougal payable to Citizens Bank and Trust for $15,902.11 (Aug. 11, 1981) (Doc. No. DEK002739).

[185] Check No. 126 from the account of Whitewater Development Co. signed by Blenda Howard payable to Madison Bank and Trust for $4,553.40 (Nov. 12, 1981) (Doc. No. GS-00014460).

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$27,000.[186] That same day, the balance of the Madison Bank loan was rolled over into a new note.[187] In April 1998, Mrs. Clinton testified she was unfamiliar with this loan.[188]

b. Madison Guaranty Loan in Bill Clinton's Name.

McDougal testified in April 1997 that in late 1982 then-Governor Clinton agreed to obtain a loan to relieve the regulatory scrutiny surrounding Whitewater Development's obligation at Madison Bank.[189] On November 15, 1982, Madison Guaranty issued Cashier's Check No. 924 made payable to "Bill Clinton" in the amount of $27,600.00.[190] McDougal testified that he intentionally left all reference to Bill Clinton out of the minutes of all Madison Guaranty board meetings, as he did not want to draw the regulators attention by using yet another note to pay off an already criticized loan.[191] The Madison Bank loan to Whitewater Development was repaid in full on November 18, 1982 with the Madison Guaranty cashier's check. Corresponding records failed to state the source of the funds.[192]

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[186] Id.

[187] Promissory Note, Disclosure, and Security Agreement No. 23337-01 from Bank of Kingston for Whitewater Development in the amount of $27,000.00 (Nov. 12, 1981) (Doc. No. DEK006521).

[188] H. Clinton 4/25/98 Depo. at 14, 18.

[189] J. McDougal 4/2/97 GJ at 44.

[190] Id. at 43-45; J. McDougal 8/96-6/97 Int. at 26. See Cashier's Check No. 924 from the account of Madison Guaranty signed by John B. Thomas payable to "Bill Clinton" for $27,600 (Nov. 15, 1982) (Doc. Nos. MD-00000001 through 03); see also Jim McDougal & Curtis Wilkie, Arkansas Mischief 195 (1996).

[191] J. McDougal 4/2/97 at 48-49; see also Madison Guaranty Savings and Loan Associations Minutes of Meeting of the Board of Directors (Nov. 16, 1982) (Doc. Nos. 79-0005633 through 35).

[192] J. McDougal 4/2/97 GJ at 43-44.

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McDougal could not remember how Check No. 924 was actually disbursed.[193] He was unable to remember whether he signed a sixty-day note for Clinton on November 15, 1982, or whether a note was even issued.[194] He did remember that it was difficult reaching Clinton, because Mr. Clinton had been defeated in 1980 and was trying to regain the governorship.[195] McDougal remembered that Governor Clinton (who won reelection in November 1982) signed a replacement six-month note in McDougal's presence in January 1983 standing in the doorway to his statehouse conference room.[196]

i. Microfilm.

In early December 1996, the OIC found the microfilm copy of the Madison Guaranty cashier's check to "Bill Clinton." The check was for $27,600.00 and dated November 15, 1982.[197] The microfilm showed there was no handwritten endorsement, and endorsement stamps on the back of the check showed it had been processed at Madison Bank.[198] The check amount matched

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[193] Id. at 45.

[194] Id. at 65-66. McDougal testified that he sometimes signed Bill Clinton's name to some of the notes at Citizens Bank and other financial institutions. Id. at 47.

[195] Id. at 46-47.

[196] Id. at 45-46. At the time, McDougal was acting as an informal advisor to the Governor; see also Jim McDougal & Curtis Wilkie, Arkansas Mischief 196 (1996).

[197] Patkus 1/21/98 GJ at 7-8; see also Cashier's Check No. 924 from the account of Madison Guaranty signed by John B. Thomas payable to "Bill Clinton" for $27,600 (Nov. 15, 1982) (Doc. No. 54-17913-00000224).

[198] See Reverse Side of Cashier's Check No. 924 from the account of Madison Guaranty signed by John B. Thomas payable to "Bill Clinton" for $27,600 (stamped paid Nov. 19, 1982) (Doc. No. 54-17913-00000225).

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the amount owed in November 1982 on the Madison Bank loan to Whitewater Development.[199]

ii. Original Check.

On July 10, 1997, the original cashier's check for $27,600.00 was discovered in the trunk of an abandoned car near Little Rock.[200] Like its microfilm copy, the check had endorsement stamps on its back without a handwritten endorsement.[201] The stamps showed the check was processed at Madison Bank.[202]

The abandoned car belonged to a former employee of Madison Guaranty named Henry Floyd.[203] Floyd testified that he was supposed to deliver some old Madison Guaranty records to a warehouse for storage but instead took the car to be repaired on November 15, 1988.[204] Because the car's value was the same or less than the bill, Floyd never returned to pick it up.[205] The transmission shop owners moved the car to a junkyard.[206] In July 1997, after a tornado damaged the junkyard, the transmission shop owners discovered the original check in the trunk of Floyd's

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[199] Promissory Note, Disclosure and Security Agreement from Whitewater Development Co. to Bank of Kingston for Loan No. 23337-01 (as of Nov. 18, 1982) (Doc. No. DEK002953).

[200] Floyd 8/6/97 GJ at 17, 98-99; see also Cashier's Check No. 924 from the account of Madison Guaranty signed by John B. Thomas payable to "Bill Clinton" for $27,600 (Nov. 15, 1982) (Doc. No. MD-00000001).

[201] See Reverse Side of Check No. 924 from the account of Madison Guaranty signed by John B. Thomas payable to "Bill Clinton" for $27,600 (stamped paid Nov. 19, 1982) (Doc. No. MD-00000002) (original); see also Patkus 4/1/97 GJ at 9.

[202] Patkus 4/1/97 GJ at 8-9.

[203] Floyd 8/6/97 GJ at 5.

[204] Id. at 5, 65.

[205] Id. at 11.

[206] Lawhon Jr. 7/15/97 GJ at 11.

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car.[207] The Independent Counsel then acquired this check.[208] The Independent Counsel transmitted the original check to the FBI laboratory in Washington, D.C. for a latent fingerprints examination. The FBI concluded there were no latent prints on the document.[209]

c. The Madison Guaranty Loan to "Bill Clinton" Was Repaid by a Nominee Loan to Chris Wade and a Payment from the James B. McDougal Trustee Account.[210]

Jim McDougal testified that in early 1983, Governor Clinton asked how the Madison Guaranty loan would be repaid.[211] McDougal told Governor Clinton that Chris Wade would help.[212] According to McDougal, Wade would cooperate because of their longstanding business relationship and because he was a strong supporter of Governor Clinton.[213]

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[207] Id. at 23-30.

[208] Irons 7/15/97 GJ at 6-9.

[209] Federal Bureau of Investigation Laboratory Report (Nov. 20, 1997). In addition to these documents, Howard Taylor, who had worked at Madison Guaranty, testified that he saw the name "Bill Clinton" listed on a computer printout of outstanding Madison Guaranty loans in August 1983. Taylor 11/18/97 GJ at 11-12. According to Taylor, the loan was in the range of "25-, 30-, or $35,000." Taylor 4/2/98 Int. at 1.

[210] A flow chart detailing how Jim McDougal repaid this loan is contained in Appendix 3 of this Volume.

[211] J. McDougal 4/2/97 GJ at 49-50.

[212] See Jim McDougal & Curtis Wilkie, Arkansas Mischief 196 (1996).

[213] J. McDougal 4/2/97 GJ at 51; see also Wade 11/6/96 GJ at 26-28, 74 (sharing Jim McDougal's recollection about Wade's willingness to take out the loan, but not recalling any mention of Bill Clinton's name or involvement).

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i. Wade Nominee Loan.

When the Clinton loan came due six months later, Madison Guaranty made a $25,000 nominee loan to Chris and Rosalee Wade.[214] McDougal recalled trying to convince Wade to take out the loan and then let McDougal use the proceeds to pay off the Bill Clinton loan.[215] Wade testified he did not remember this meeting, though he recalled taking out a loan for Jim McDougal for approximately $25,000.[216] Wade testified he did not remember the loan being connected to Bill Clinton.[217]

On July 11, 1983, Madison Guaranty Cashier's Check No. 3678 for $25,000 was issued to Chris Wade.[218] The check was deposited into Wade's account at First Bank & Trust Co. ("First Bank") four days later.[219] That same day, Wade wrote Check No. 298 from his First Bank account to Madison Guaranty for $25,000.[220] Jim McDougal used this money to pay off most of

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[214] See Promissory Note from Madison Guaranty to Chris and Rosalee Wade (June 16, 1983) (Doc. No. 56-00117646).

[215] J. McDougal 4/2/97 GJ at 51.

[216] C. Wade 11/6/96 GJ at 26-27.

[217] Id. at 28.

[218] Check No. 2678 from the account of Madison Guaranty signed by Diana M. Warren payable to Chris Wade for $25,000.00 (July 11, 1983) (Doc. No. 339-00000677); J. McDougal 4/2/97 GJ at 50-51.

[219] Deposit ticket for First Bank & Trust Co. (date illegible) (Doc. No. 339-00000675). Wade provided the Independent Counsel with his ledger card for this and other loans. Recorded on this card for this loan was the notation "Jim," connecting the loan to McDougal (Doc. No. 335-00053706).

[220] Check No. 298 from the account of Chris Wade payable to Madison Guaranty Savings for $25,000 (July 15, 1983) (Doc. No. 339-00000681).

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the Clinton loan.[221] On August 1, 1983, the McDougals paid $5,081.82 from the James B. McDougal Trustee account to satisfy the remainder of the Clinton loan.[222]

ii. "Payoff Clinton" Microfilm.

In November 1996, this Office found Madison Guaranty microfilm of Check No. 201 from James B. McDougal's Trustee account, which Susan McDougal had signed, payable to Madison Guaranty for $5,081.82.[223] In the check's memo section, in Mrs. McDougal's handwriting, are the words "Payoff Clinton."[224] After reviewing the check and corresponding documentation, Jim McDougal testified that the check concerned the Whitewater Development loan at Madison Bank.[225]

The Independent Counsel also located documentary evidence establishing the direct link

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[221] J. McDougal 4/2/97 GJ at 50-51.

[222] See Check No. 201 from the account of James B. McDougal Trustee signed by S. H. McDougal payable to Madison Guaranty for $5,081.82 (Aug. 1, 1983) (Doc. No. 54-17853-00000247). This by now dormant trustee account was originally set up by Mrs. McDougal to collect mortgage payments from the Clinton-owned Saltillo Heights lot sales, so that the lot payments could pay off the loan Attorney General Clinton used to buy the land. J. McDougal 4/2/97 GJ at 53-54, 62; J. McDougal 8/96-6/97 Int. at 30.

[223] See Check No. 201 from the account of James B. McDougal Trustee signed by S. H. McDougal payable to Madison Guaranty for $5,081.82 (Aug. 1, 1983) (Doc. No. 54-17853-00000247). On January 26, 1998, the OIC sent the microfilm check to the IRS Criminal Investigation National Forensic Laboratory in Chicago for a handwriting analysis to determine whether the signature on the bottom of the check matched the handwriting exemplars of Susan McDougal already on file. The Report of Laboratory Examination concluded that the signature on the check matched Susan McDougal's known exemplars. See Internal Revenue Service Criminal Investigation National Forensic Laboratory Report of Examination (Mar. 31, 1998).

[224] Check No. 201 from the account of James B. McDougal Trustee signed by S H McDougal payable to Madison Guaranty for $5,081.82 (Aug. 1, 1983) (Doc. No. 54-17853-00000247).

[225] J. McDougal 4/2/97 GJ at 54.

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between the Madison Guaranty loan taken out in Bill Clinton's name and the Wade nominee loan used to pay off the former. One document was a handwritten Madison Guaranty ledger listing loans to individuals.[226] The document reflected adjustments in the loan ledger for loans recently paid off and loans that had recently been added.[227] On the left side of the document, under the column titled "subledger," appears the notation "B. Clinton" and "–$2,600."[228] This reference corresponded to the $2,600 principal balance remaining on the Madison Guaranty loan to Bill Clinton after the application of the $25,000 from the Wade nominee loan. There is no other known loan involving "B. Clinton" to which this entry might otherwise refer.

The second document was a handwritten calculation of interest and principal payments on the $27,600 loan.[229] The document records the figure "$2,477.19" and the phrase "INT from 11-15-82 to 7-25-83" -- the respective dates of Madison Guaranty Cashier's Check No. 924 issued to Bill Clinton, and the day that Wade's July 15, 1983 Check No. 298 to Madison Guaranty was processed.[230] Beneath these figures is written "463 int from 7-25-81."[231] Adding the two interest amounts together -- $2,477.19 and $463 -- the resulting sum is $2,481.82 -- the exact amount of interest remaining on the loan. Underneath the two interest figures was written $5,081.82, the

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[226] Madison Guaranty Handwritten Ledger (Doc. No. 174-00235453). The OIC obtained copies of this document from the RTC, and the FDIC as records custodian for Madison Guaranty.

[227] Madison Guaranty Handwritten Ledger (Doc. No. 174-00235453).

[228] Id.

[229] Handwritten calculation of interest and payments (July 25, 1983) (Doc. No. 174-00139837). This document was also obtained from the FDIC.

[230] Id.

[231] Id.

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total amount of $2,481.82 interest and $2,600 principal remaining and the exact amount of the James B. McDougal Trustee account check with the "Payoff Clinton" handwritten notation.[232]

The Independent Counsel questioned Mrs. Clinton about this loan and (as discussed more fully below) about Mrs. McDougal's refusal to answer questions about it, to which Mrs. Clinton replied she had "no information whatsoever."[233]

4. A $300,000 Loan from CMS to Susan McDougal and Master Marketing Was Used to Benefit the Whitewater Corporation.

In 1994, David Hale alleged that Whitewater Development benefited from a $300,000 loan made by CMS, Hale's small business investment company ("SBIC"), to Susan McDougal's business called Master Marketing.[234] CMS was restricted to lending money only to disadvantaged businesses, which were defined by federal law.[235] The loan was made even though Mrs. McDougal and her business, Master Marketing, did not qualify as a disadvantaged business under federal law.[236] Mrs. McDougal signed the loan form as both a sole proprietorship and as an

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[232] Id.

[233] H. Clinton 4/25/98 Depo. at 19.

[234] Hale 6/2/94 Int. at 1-2; U.S. Small Business Administration Portfolio Financing Report for Susan H. McDougal, d/b/a Master Marketing (Apr. 3, 1986) (Doc. No. H-00004194).

[235] Tr. at 2287-88, 2291 United States v. McDougal, et al., No. LR-CR-95-173 (E.D. Ark. Mar. 27, 1996) (testimony of Patricia DiMuzio) (discussing section 301(d) of SBA, which stated: "[A] small business investment company, the investment policy of which is that its investments will be made solely in small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages." Pub.L. 85-699 § 301(d) (repealed 1996)).

[236] Foren 10/26/95 Senate Whitewater Comm. Depo. at 106-07.

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individual, stating that the money would be used for her advertising work.[237]

The Independent Counsel determined that no entity called Master Marketing ever existed, that the proceeds of the loan were not used for its represented purpose,[238] and that the loan was never repaid.[239] The Independent Counsel also determined that the McDougals used the $300,000 to pay preexisting debts and invest in additional projects, including land sold to Whitewater Development by International Paper, which McDougal named "Lorance Heights."[240]

a. The Lorance Heights Purchase.

In the spring of 1986, Jim McDougal wanted to buy the Lorance Heights property and turn it into a Madison Financial Corporation ("Madison Financial") (a real estate service corporation controlled by the McDougals) development similar to already-developed Maple Creek Farms, located further south.[241] Lorance Heights was landlocked, but there was a potential

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[237] Loan Agreement By and Between Susan H. McDougal d/b/a Master Marketing and Capital-Management Services, Inc. (Doc. Nos. AAU-00000820 through 27). Susan McDougal later submitted other forms indicating that the loan was for real-estate brokerage and land development (Doc. Nos. AAU-00000817 through 19; 174-00001144-106 through 107).

[238] See Chapter 1 of Part B of this Report for a description of how the proceeds were used.

[239] Tr. at 3377, 3380, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark. 1996) (testimony of Hale).

[240] Id. at 7421-22 (testimony of Jim McDougal); Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation at 118 (Apr. 24, 1995).

[241] J. McDougal 8/96-6/97 Int. at 17. The McDougals formed Madison Financial in 1982 as a service corporation subsidiary of Madison Guaranty for the development of residential housing.

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entry 200 feet from International Paper property.[242] McDougal tried to obtain an easement from the owner of the property, International Development Company ("IDC"),[243] which IDC declined and instead offered to sell McDougal the property, later known as "Castle Grande."[244]

The McDougals could not purchase the property using Madison Guaranty money and Madison Financial, because the law prohibited them from investing more than six percent of the savings and loan's assets in the service corporation.[245] To avoid this prohibition, the McDougals bought the Lorance Heights property using the Whitewater corporation.[246] On March 4, 1986, Whitewater Development, through Jim McDougal, signed a contract with International Paper to purchase the 810.22-acre parcel for $550,950.00.[247] The contract required a $25,000 payment by check on execution of the agreement.[248] On April 21, 1986, McDougal wrote Check No. 1280 for $25,000, to International Paper from his Madison Guaranty account to satisfy the required down

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[242] Id.

[243] J. McDougal 8/96-6/97 Int. at 17.

[244] Id. See Part B of this Report for additional discussion of the Castle Grande acquisition.

[245] J. McDougal 4/2/97 GJ at 26-27; J. McDougal 4/3/97 GJ at 7-8.

[246] J. McDougal 4/3/97 GJ at 7-8. Jim McDougal felt that because of Whitewater's tax loss, and because the Clintons were partners, funding would be easier to obtain by putting the land in Whitewater's name. Id. at 8. McDougal's acquisition of the Castle Grande property is discussed at length in Chapter 1 of Part B of this Report.

[247] Contract for Sale Between International Paper and Whitewater Development and Amendment (Mar. 4, 1986) (Doc. Nos. 43-00001745 through 63). Although International Paper had previously opened a file on the transaction and listed McDougal as the buyer (and Jim Guy Tucker as the attorney) (Doc. No. 43-00001723), the closing statement (dated October 10, 1986) listed Whitewater Development Corp. as the purchaser (Doc. No. 43-00001770).

[248] Contract for Sale Between International Paper and Whitewater Development at 2 (Mar. 4, 1986) (Doc. No. 43-00001746).

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payment.[249] As a result of this investigation, the Independent Counsel concluded the funds to pay the $25,000 were derived from the $300,000 CMS loan to Master Marketing because the Master Marketing proceeds had been deposited into the McDougals' account on April 7, 1986.[250]

b. Jim and Susan McDougal Executed a Note and Mortgage for Whitewater Development to Cover the Remainder of the Lorance Heights Purchase.

On October 10, 1986, Jim and Susan McDougal signed a real estate note and letter amending a contract of sale with International Paper on Whitewater Development's behalf.[251] Whitewater Development obligated itself to pay International Paper the principal sum of $440,760.00 plus interest at an annual rate of ten-and-one-half percent to fund the remaining balance. On December 1, 1986, Jim McDougal transferred Whitewater Development's ownership of Lorance Heights to Great Southern, another company the McDougals controlled.[252]

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[249] Check No. 1280 from the account of James B. McDougal payable to International Paper Realty Corporation for $25,000.00 (Apr. 21, 1986) (Doc. No. 56-81992-00000510).

[250] J. McDougal 4/3/97 GJ at 15-16; Deposit Ticket (Apr. 7, 1986) (Doc. No. 054-01006138).

[251] Real Estate Note (Oct. 10, 1986) (Doc. Nos. 138-00006919 through 20); Letter to Whitewater Development Amending Contract of Sale Between Whitewater Development Corp. and International Paper (Oct. 10, 1986) (Doc. No. 43-00001764). Based on these documents, it appears that McDougal apparently signed an additional note for $30,000 with International Paper to provide a portion of the sum due at the closing date.

[252] J. McDougal 4/3/97 GJ at 34. The deed was recorded on December 15, 1986. Warranty Deed (filed Dec. 15, 1986) (Doc. Nos. 43-00000875 through 76); see also Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation at 120 (Apr. 24, 1995).

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i. Jim McDougal and David Hale Alleged That Bill Clinton Knew about the CMS Loan and the Lorance Heights Purchase.

David Hale alleged that Jim McDougal previously asked him for a loan to help clean up some matters "for the political family in Arkansas," which McDougal said included Governor Clinton.[253] President and Mrs. Clinton denied any knowledge of the $300,000 CMS loan to Mrs. McDougal or its illegality.[254]

During the 1996 trial of the McDougals and Governor Tucker, Hale testified he met Jim McDougal and Governor Clinton in a trailer at McDougal's Castle Grande real estate development in January or February of 1986 and discussed the CMS loan with them.[255] Hale could not remember what time the meeting took place but recalled that it was dark and chilly outside.[256] Hale remembered walking in and finding McDougal and Governor Clinton inside, standing around and talking about politics.[257] Hale said Governor Clinton was wearing jogging clothes.[258] After they "visited a minute," McDougal said that he needed a loan in the name of "Susan's advertising company."[259] Hale said Governor Clinton offered him a security interest "in

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[253] Hale 8/2/95 GJ at 62-63.

[254] W. Clinton 5/24/95 RTC Interrog. Resp. at 45; H. Clinton 5/24/95 RTC Interrog. Resp. at 55; see also W. Clinton 7/22/95 Depo. at 78.

[255] Tr. at 3220-21, United States v. McDougal et al., No. LR-CR-95-173 (E. D. Ark. Apr. 2, 1996) (testimony of Hale).

[256] Id. at 3221 (testimony of Hale).

[257] Id. at 3222 (testimony of Hale).

[258] Id. at 4558-60 (testimony of Hale).

[259] Id. at 3222 (testimony of Hale).

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some raw land in Marion County" as collateral on the loan to Mrs. McDougal,[260] though it was later decided that Hale would rely on the McDougals' personal guaranty for the loan.[261] Hale testified that Governor Clinton reminded McDougal "[m]y name cannot show up," and McDougal replied, "I've already taken care of that."[262]

Hale also testified he had two more conversations with Governor Clinton about the CMS loan, one before the alleged trailer meeting and one after. Hale said that sometime during the 1985-86 holiday season, Governor Clinton saw him at the Capitol Building and asked whether "he was going to be able to help he and Jim out."[263] Hale said he saw Governor Clinton again two or three months after the loan was made, this time at the University Mall in Little Rock.[264] Hale said he was walking out of J.C. Penny's when Governor Clinton came over and asked, "Have you heard what that [expletive deleted] Susan has done?"[265] Hale replied no, and that he did not really want to know.[266] Hale believed Governor Clinton was referring to Susan McDougal and her use of the loan money.[267]

Before he agreed to cooperate with this investigation, Jim McDougal denied the Castle

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[260] Id. at 3223 (testimony of Hale).

[261] Id.

[262] Id. at 3224 (testimony of Hale).

[263] Hale 8/2/95 GJ at 24.

[264] Id. at 25-26.

[265] Id. at 26.

[266] Id.

[267] Id.

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Grande meeting with Hale and Governor Clinton.[268] After agreeing to cooperate, McDougal admitted to withholding information about the meeting.[269] In his April 1997 grand jury testimony, Jim McDougal confirmed that there had been a meeting where the loan to Susan McDougal was discussed.[270] McDougal testified that he met with Hale and Governor Clinton about the CMS loan one evening around dusk at the Castle Grande office.[271] McDougal said the meeting occurred sometime between March 18, 1986 (when Susan McDougal applied for the loan) and April 3, 1986 (when CMS issued the loan).[272]

McDougal said that shortly after Hale arrived for the scheduled meeting, Governor Clinton walked up the sidewalk and the three men engaged in a friendly conversation by discussing the CMS loan to Mrs. McDougal:

> We shook hands and did the usual things that people in politics do. You know, we made a minute or two of polite conversation. And either David or I one said, "We've been discussing -- or I've got the application for Susan's loan." And at that -- when it came up, however, it came up, the governor said something to the effect, "I sure hope you can help us out on that."[273]

McDougal also remembered that Governor Clinton then raised the possibility of using the

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[268] See Pat Lynch radio show (Feb. 8, 1996); Tr. at 7033-34, United States v. McDougal et al., No. LR-CR-95-173 (E. D. Ark. May 7, 1996) (testimony of Jim McDougal).

[269] J. McDougal 4/3/97 GJ at 16-20; J. McDougal 8/96-6/97 Int. at 46.

[270] See generally J. McDougal 4/2-3/97 GJ.

[271] J. McDougal 4/3/97 GJ at 16-20.

[272] Id. at 16-21; Arkansas State Police Governor's security logs recorded that on March 19, 1986, Governor Clinton went jogging at 4:30 p.m. (no return time was noted). The next entry was for 9:20 p.m. that evening when Clinton went to the airport to pick up Mrs. Clinton. See Governor Security Logs (Mar. 19, 1986).

[273] J. McDougal 4/3/97 GJ at 20.

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Marion County land as collateral.[274]

Jim McDougal testified that he did not expect Governor Clinton that evening.[275] McDougal stated he thought he might have told the Governor about the loan, the plan to have Mrs. McDougal sign it, and his intent to use some of the funds as a down payment on Lorance Heights when the two men had met previously at the Capitol in early March 1986:

> Well, I first told him that I was very embarrassed at how poorly we had done [with the Whitewater investment] and that I thought I had found something that would make us whole . . . give us a chance to recoup what we had put in and hopefully to make some more money and to have the advantage of the tax write off.
> . . .
>
> He said, "How are we going to pay for it?" I said, "Well, we're buying it from International Paper, and they have an in-house financing where they'll carry it to sell it to us . . . but we have to make a down payment."
> . . .
>
> I told him that David Hale had agreed to help us with the down payment -- get the money for the down payment.[276]

McDougal thought this conversation occurred March 4, 1986, when he met alone with Governor

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[274] Id. at 21-22.

[275] Id. at 20-21.

[276] Id. at 10-11. On this and other matters, McDougal's testimony, after signing a cooperation agreement with the United States, differed substantially from his testimony during his criminal trial. See, e.g., Tr. at 7332-37, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark. May 8, 1996) (testimony of Jim McDougal) (testifying that he did not tell Governor Clinton about Whitewater Development's purchase of the Lorance Heights property on March 4, and that he believed that the Clintons had relinquished their shares of Whitewater before that date). After he entered into a cooperation agreement with the United States, McDougal explained that he thought that the White House did not want him to testify and that President Clinton perjured himself during his testimony. J. McDougal 8/96-6/97 Int. at 59.

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Clinton in the Governor's office before the scheduled arrival of Health Department officials.[277]

Other records suggest this conversation could have occurred January 16, 1986, when, according to Governor Clinton's calendars, McDougal met with Governor Clinton at the Governor's Mansion.[278] Hale testified that in early January 1986, McDougal referred to the CMS-McDougal loan and said, "I'm going by and talk to Clinton about it on Saturday at the Governor's Mansion."[279] McDougal did not remember this January 16 meeting.[280]

Jim McDougal was certain he had not told Governor Clinton about meeting Hale at Castle Grande, but that he had told Mrs. McDougal about it.[281] By 1986, Susan McDougal had begun to manage the McDougals' businesses because of Jim McDougal's medical problems.[282] Regardless, Mrs. McDougal knew about the Lorance Heights transaction from inception to closing.[283] McDougal believed that Mrs. McDougal spoke with Governor Clinton frequently, so

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[277] McDougal was lobbying Governor Clinton to reassign a Health Department sanitation inspector who had been creating problems for a McDougal development. J. McDougal 4/3/97 GJ at 9-10; see also W. Clinton 4/28/96 Depo. at 22, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark. Apr. 11, 1996); W. Clinton 7/22/95 Depo. at 67-68 (noting a meeting with McDougal and officials from the health department). Other witnesses, however, testified that McDougal had no opportunity to talk with the Governor alone that day. Butler 8/27/97 Int. at 2; Butler 3/8/95 Int. at 2-3; Hill 9/4/97 Int. at 1-2.

[278] J. McDougal 8/96-6/97 Int. at 39.

[279] Tr. at 4335, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark. Apr. 10, 1996) (testimony of Hale).

[280] J. McDougal 8/96-6/97 Int. at 39.

[281] Id. at 46 (emphasis supplied). At the time of the alleged meeting, the McDougals were separated, but still maintained a working relationship. The McDougals separated in mid-1985. J. McDougal 8/96-6/97 Int. at 81.

[282] J. McDougal 4/3/97 GJ at 29-30.

[283] Id. at 29.

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that she might have told him about the Hale meeting.[284]

ii. President and Mrs. Clinton Denied Hale's and McDougal's Allegations Concerning the CMS Loan.

The President testified that he did not know in late 1985 or early 1986 of any discussions between McDougal, Hale, and Tucker about getting money for the "political family" of Arkansas.[285] The President also testified that he knew nothing about the CMS loan to Mrs.

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[284] J. McDougal 8/96-6/97 Int. 48, 53, 63. James B. Stewart, Susan McDougal's Silence, The New Yorker, Feb. 17, 1997, at 65 ("She has acknowledged being in frequent contact with [Clinton]-not at the time of the loan, necessarily, but several months afterward"); id. at 66 ("Susan told me in an earlier interview . . . that she was on the phone with Clinton nearly every day [in late 1986 and 1987]").

[285] W. Clinton 7/22/95 Depo. at 77-78. Jim Guy Tucker, in testimony before the grand jury, remembered that then-Governor Clinton once used the phrase "political family" in a conversation with then-Lieutenant Governor Tucker during the 1992 campaign. Tucker had requested a meeting with Governor Clinton to discuss whether he would step down as governor during the campaign. In notes from the meeting, dated April 14, 1992, Tucker had written:

> In private, Bill Clinton and I meet. Bill Clinton says he wanted to convince me of two things. One, he doesn't want to quit. Surprise. And two, neither he, quote, "Nor any member of his family or political family," closed quote, "Intend," question mark, "Or want to or have any desire to run for governor in '94 [.]"

Tucker 4/21/98 GJ at 107-08. Tucker pointed out that he considered Hale to be a liar and thought Hale lied to the grand jury and the Independent Counsel. Id. at 108. Nevertheless, Tucker said that:

> "The political family" is a term that I don't recall ever having heard used in Arkansas. It's not a term I used. It's not a term that is familiar with me. I've been told by others that it's a phrase commonly used in Chicago and in other locations. I never heard it used in Arkansas, never, until David Hale used it in his testimony. I was surprised to note in my notes that that was a phrase that Governor Clinton had used.

Id. at 109.

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McDougal, the Castle Grande meeting with Hale, or the Lorance Heights purchase.[286] The President denied attending any meeting between Jim McDougal and David Hale.[287] The President denied asking Hale to loan money to Jim or Susan McDougal or pressuring Hale to make any loans.[288] He denied ever discussing the CMS loan with Jim or Susan McDougal and denied receiving any proceeds from the loan.[289]

The President testified that he learned that Whitewater Development once briefly owned Lorance Heights from press reports.[290] President Clinton said that since he did not know Whitewater Development owned Lorance Heights, he had no reason to question why Jim McDougal transferred the property out of Whitewater Development[291] and never even discussed Lorance Heights with McDougal.[292] Mrs. Clinton testified that she did not know before 1989 that McDougal wanted to purchase the Lorance Heights parcel from International Paper.[293]

President and Mrs. Clinton denied Hale's and McDougal's allegations in answers to the RTC's interrogatories in 1995. The President said:

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[286] W. Clinton 4/28/96 Depo. at 32-33, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark. 1996); see also W. Clinton 7/22/95 Depo. at 86-88, 90.

[287] W. Clinton 4/28/96 Depo. at 18-19, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark. 1996).

[288] Id. at 20; see also W. Clinton 7/22/95 Depo. at 80.

[289] W. Clinton 4/28/96 Depo. at 32-33, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark.).

[290] Id. at 35.

[291] Id. at 34.

[292] Id. at 92-93, 97, 100.

[293] H. Clinton 5/24/95 RTC Interrog. Resp. at 59.

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> I don't know what "alleged claim" David Hale has made. I don't recall any conversation with David Hale about loaning money to Jim McDougal, Susan McDougal, Master Marketing, Madison Guaranty, or any entity owned by the McDougals, and I am certain I never "pressured" Hale or any company he owned to make any loan.
>
> . . . . .
>
> I don't recall any conversations with Jim or Susan McDougal about the subject of David Hale or Capital Management loaning money to Jim McDougal, Susan McDougal, Master Marketing, Madison Guaranty or any entity owned by the McDougals.[294]

The First Lady's denial was similar:

> I don't know what "alleged claim" David Hale has made. I did not have any conversation with David Hale about loaning money to Jim McDougal, Susan McDougal, Master Marketing, Madison Guaranty, or any entity owned by the McDougals.[295]

Mrs. Clinton also denied any related conversations:

> I did not have any conversations with Jim or Susan McDougal about the subject of David Hale or Capital Management loaning money to Jim McDougal, Susan McDougal, Master Marketing, Madison Guaranty or any entity owned by the McDougals.[296]

Mrs. Clinton also said that she did not know about this loan and thus had no conversations with her husband about it.[297]

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[294] W. Clinton 5/24/95 RTC Interrog. Resp. at 45.

[295] H. Clinton 5/24/95 RTC Interrog. Resp. at 54-55; see also H. Clinton 7/22/95 Depo. at 62-63.

[296] Id.

[297] H. Clinton 7/22/95 Depo. at 66.

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c. The CMS Loan's Effect on the Madison Guaranty Loan to "Bill Clinton."

In addition to the $25,000 down payment for Whitewater Development's purchase of land from International Paper, the CMS loan to Susan McDougal also had an indirect impact on Whitewater. On March 22, 1985, Jim McDougal paid off the Wade nominee loan (obtained to repay the November 1982 Madison Guaranty "Bill Clinton" loan) using Whitewater Development Check No. 137. This check was drawn on Whitewater's Madison Guaranty account, payable to Wade's Ozarks Realty for $25,000.00.[298] This overdrew the Whitewater Development Madison Guaranty account by $24,470.90.[299] The shortfall was covered eight days later with proceeds from a one-year $135,000 loan the McDougals took out through another of their real estate operations, Flowerwood Farms from Stephens Security Bank on April 3, 1985.[300] Flowerwood Farms Check No. 194 for $24,455.90 was written to "White Water Development" on April 9, 1985.[301] McDougal signed the check and deposited it into Whitewater's Madison Guaranty account.[302]

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[298] Check No. 00137 from the account of Whitewater Development Corporation, Inc. signed by James B. McDougal payable to Ozark Realty Co. for $25,000 (Mar. 22, 1985) (Doc. No. DEK002099).

[299] Whitewater Development Corp. Bank Statement (Apr. 30, 1985) (Doc. No. DEK002105); J. McDougal 4/2/97 GJ at 56-57.

[300] J. McDougal 4/3/97 GJ at 5; J. McDougal 4/2/97 GJ at 57-60, 66-67; see Check No. 194 from the account of Flowerwood Farms signed by James B. McDougal payable to White Water Development for $24,454.90 (Apr. 9, 1985) (Doc. No. 54-17988-00000392); Check No. 032237 from the account of Stephens Security Bank signed by Carol Reaves payable to

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Jim McDougal then paid off the Stephens Security Bank loan on April 7, 1986 with a cashier's check[303] using $111,524.21 of the $300,000 Master Marketing loan from CMS.[304]

Flowerwood Farms for $135,000 (Apr. 1, 1985) (Doc. Nos. 35-00000057 through 58); Mortgage Agreement between James B. McDougal and Susan H. McDougal, d/b/a Flowerwood Farms, Inc. and Stephens Security Bank (Apr. 3, 1985) (Doc. Nos. 35-00000007 through 11).

[301] Check No. 194 from the account of Flowerwood Farms signed by James B. McDougal payable to White Water Development for $24,454.90 (Apr. 9, 1985) (Doc. No. 54-17988-00000392); Whitewater Development Corp. Bank Statement (Apr. 30, 1985) (Doc. No. 54-00003167-A).

[302] Id. The word "Loan" appeared in the check's memo section. Based on standard first-in, first-out accounting convention, the check to Whitewater Development was totally funded by the $135,000 Stephens Security Bank loan. See Tr. 6734-68, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark. May 2, 1996) (testimony of Michael Patkus)

[303] Cashier's Check No. 4878 from the account of Madison Guaranty Savings and Loan Association signed by Jamie Moring payable to Stephens Security Bank for $111,524.21 (Apr. 7, 1985) (Doc. Nos. 35-00000004 through 05).

[304] J. McDougal 4/2/97 GJ at 60; see also Tr. 6734-68, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark. May 2, 1996) (testimony of Michael Patkus) (explaining how the first-in, first-out accounting convention was employed to determine how the $135,000, and later the $300,000, were used). McDougal's account was erroneously debited twice. One debit was for $122,459.79, funding the $111,524.21 check plus another cashier's check. The second debit was for $111,500, reflecting a transfer of funds from the McDougals' personal account to their Flowerwood Farms account. The Flowerwood Farms account was debited for $111,524.21 and the McDougals' personal account was credited for that amount. See The McDougals' account statement reflecting debits and credits (Apr. 30, 1986) (Doc. Nos. 174-00000953 through 55); Debit to the McDougals' account for transfer to Flowerwood Farms account in the amount of $111,500 (later reversed) (Apr. 30, 1986) (Doc. No. 174-00000953); Deposit ticket to Flowerwood Farms account showing the deposit of the $111,500 from the McDougals' personal account (Apr. 4, 1986) (Doc. No. 054-01006140); Debit to McDougals' account for the charge of the two Cashier's Checks (one being the payment to Stephens) (Apr. 8, 1986) (Doc. No.56-81990-00000339) (Apr. 7, 1986) (Doc. Nos. 054-00170454 through 55, 460 through 461); Check No. 4878 from the account of Madison Guaranty Savings and Loan signed by Jamie Moring payable to Stephens Security Bank for $111,524.90 (Apr. 7, 1986) (Doc. No. 35-000000004); Flowerwood Farms account statement showing the deposit of $111,500 and the transfer of $111,524.21 back to the McDougals' personal account to correct the double debit (Apr. 30, 1986) (Doc. No. 56-00110713); Debit to Flowerwood Farms account for $111,524.21 for the transfer of funds back to the McDougals' personal account (date illegible) (Doc. No. 56-81992-00000514);

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5. Susan McDougal Refused to Answer All Questions about President Clinton's Involvement in and/or Knowledge of the Madison Guaranty Loan, the Lorance Heights Purchase, or the CMS Master Marketing Loan.

The Independent Counsel concluded that Susan McDougal may have had information about these transactions and whether, and to what extent, President Clinton knew of them due to testimony of witnesses and documentary evidence:

- Susan McDougal was an officer of Madison Guaranty and a director of Madison Bank and attended the meetings when the Madison Bank loan to Whitewater Development was scrutinized.[305]

- Susan McDougal listed herself as owner of the fictitious sole proprietorship that received the CMS loan proceeds and was convicted by a jury for her involvement with the subsequent illegal expenditure of the proceeds.[306]

- Jim McDougal believed that Mrs. McDougal might have asked Governor Clinton to "do something related to the [CMS] loan."[307] He thought it probable that Governor Clinton believed the Clintons would get some financial benefit from the CMS loan to Mrs. McDougal.[308]

Deposit ticket to the McDougals' personal account for credit of the $111,524.21 from Flowerwood Farms' account (Apr. 15, 1986) (Doc. No. 58-81991-00000420).

[305] Minutes of Special Meeting of Board of Directors of Madison Bank and Trust, Kingston, Arkansas (Oct. 12, 1982) (Doc. No. 79-00005645).

[306] Order, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark. Aug. 14, 1996); Tr. at 8121-22, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark. May 28, 1996). During an ABC News interview, Susan McDougal said she did not know, when she took out the loan at Hale's CMS, that the funds could only go to disadvantaged clients: "I ran in, signed the documents and he [Hale] handed me a check for $300,000, which is a huge amount of money. And I said, 'That was easy. Boy, that was easy.'" Prime Time Live: Tr. of Diane Sawyer Interview of Susan McDougal at Doc. No. 2053-00000131 (ABC television broadcast, Aug. 30, 1996) (transcript contains additional interview portions not included in the public broadcast).

[307] J. McDougal 8/96-6/97 Int. at 55.

[308] Id.

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- Susan McDougal executed two documents in October 1986 to fund Whitewater's Lorance Heights purchase.[309]

In an effort to obtain Susan McDougal's testimony regarding these transactions, the Independent Counsel sought immunity for Mrs. McDougal pursuant to 18 U.S.C. § 6002. On September 2, 1996, Mrs. McDougal was granted immunity and ordered by a federal judge to "provide testimony and other information as to all matters about which she may be interrogated before the Grand Jury."[310] Consistent with 18 U.S.C. § 6002, the immunity order provided that Mrs. McDougal's testimony could not be used against her in any case, except a prosecution for perjury or false statements.[311]

On September 4, 1996, Mrs. McDougal was asked the following three questions before the grand jury:

> Q. Did you ever discuss your loan from David Hale with William Jefferson Clinton?[312]
>
> . . . . .
>
> Q. Did you ever discuss Lorance Heights with William Jefferson Clinton?[313]

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[309] Real Estate Note (Oct. 10, 1986) (Doc. Nos. 138-00006919 through 20); Letter to Whitewater Development Amending Contract of Sale Between Whitewater Development Corp. and International Paper (Oct. 10, 1986) (Doc. Nos. 43-00001764).

[310] Order Compelling Testimony, In re: Grand Jury Proceedings, No. GJ-96-3 (E.D. Ark. Sept. 3, 1996).

[311] Id.

[312] S. McDougal 9/4/96 GJ at 9. In an interview with ABC News, Susan McDougal also declined to answer this question, stating, "[t]hat's probably something that my attorney would not want me to talk about." Prime Time Live: Tr. of Diane Sawyer Interview of Susan McDougal at Doc. No. 2053-0000108 (ABC television broadcast, Aug. 30, 1996) (transcript contains additional interview portions not included in the public broadcast).

[313] S. McDougal 9/4/96 GJ at 9.

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. . . . .

Q. To your knowledge, did William Jefferson Clinton testify truthfully during the course of your trial?[314]

Mrs. McDougal refused to answer these questions, and Chief Judge Susan Webber Wright of the United States District Court for the Eastern District of Arkansas held her in contempt.[315] Judge Wright then held a civil contempt hearing.[316] All defenses raised by Mrs. McDougal's attorney were rejected (including Mrs. McDougal's charge that she could not answer because Independent Counsel Starr only "wanted me to tell them something bad about the Clintons").[317] Judge Wright held Mrs. McDougal in contempt and sentenced her to civil confinement until she agreed to testify truthfully before the grand jury.[318]

On April 23, 1998, Mrs. McDougal again appeared before the grand jury under the same

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[314] Id. During an interview with ABC News, Susan McDougal said, "I don't know of anything illegal that Bill or Hillary Clinton ever did." Prime Time Live: Tr. of Diane Sawyer Interview of Susan McDougal at Doc. No. 2053-00000111 (ABC television broadcast, Aug. 30, 1996) (transcript contains additional interview portions not included in the public broadcast). It was pointed out to Susan McDougal that the President's knowledge of the CMS loan would not necessarily have been illegal, and that her refusal to answer questions created the implication that the President did indeed know about the loan. Id. Susan McDougal said that she hoped that that implication was not created. Id. at 112.

[315] S. McDougal 9/4/96 GJ at 9. During media interviews, Susan McDougal also refused to answer these and related questions because of the interest expressed by the Independent Counsel. See, e.g., Prime Time Live: Tr. of Diane Sawyer Interview of Susan McDougal at Doc. Nos. 2053-00000017 through 167 (ABC television broadcast, Aug. 30, 1996) (transcript contains additional interview portions not included in the public broadcast); Frontline, Once Upon a Time in Arkansas, Oct. 7, 1997.

[316] Order, In re: Grand Jury Subpoena, No. GJ-96-3 (E.D. Ark. Sept. 6, 1996).

[317] Hearing on Motion to Vacate Civil Contempt Order at 45, United States v. S. McDougal, No. GJ-96-3 (E.D. Ark. Sept. 13, 1996).

[318] Order, In re: Grand Jury Subpoena, No. GJ-96-3 (E.D. Ark. Sept. 6, 1996).

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grant of immunity. Prosecutors and grand jurors asked her about the meaning of her "Payoff Clinton" notation on the check she wrote.[319] She again refused to answer all questions posed to her.[320] Following her continued refusal to answer, a federal grand jury returned an indictment that charged her with two counts of criminal contempt (18 U.S.C. § 401(3)) and one count of obstruction of justice (18 U.S.C. § 1503) for knowingly and willfully disobeying and resisting the lawful order of a court of the United States, and refusing to answer questions or provide testimony and other information as to all matters about which she was questioned before the federal grand jury.[321]

At trial, Mrs. McDougal testified in her own defense and responded to the questions asked of her during her April 1998 grand jury appearance. Questioned by her own attorney about the $27,600 loan check to Bill Clinton and the $5,081.82 check with the "Payoff Clinton" notation, she denied knowledge of the loan or what the "Payoff Clinton" notation meant, speculating it could refer to property the McDougals owned in Clinton, Arkansas:

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[319] See generally S. McDougal 4/23/98 GJ. In an interview with ABC News, Susan McDougal did state that "[t]he Clintons never had a loan at Madison Guaranty. Jim and I did. And if Jim gave them money from Madison Guaranty it would be easily be traceable. It's a federal institution. All the money going in and all the money going out has been accounted for and looked and examined and reexamined. And I've never seen one document, one shred of evidence, that any money left Madison Guaranty going to the Clintons illegally." Prime Time Live: Tr. of Diane Sawyer Interview of Susan McDougal at Doc. Nos. 2053-00000055 through 056 (ABC television broadcast, Aug. 30, 1996) (transcript contains additional interview portions not included in the public broadcast).

[320] See generally S. McDougal 4/23/98 GJ.

[321] On April 12, 1999, the jury found Susan McDougal not guilty of one count of obstruction of justice and was hung on the two counts of criminal contempt. On May 25, 1999, the Independent Counsel announced his decision not to retry Susan McDougal and moved to

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Q. [Y]ou heard a lot about a $5,000 loan, is that correct, or a $5,000 check for pay off Clinton?

A. Yes.

Q. Now, at the time, back in April of '98, what was your reaction when you saw the $5,000 check with pay off Clinton?

A. I thought it was possibly to pay off some land that we owned in Clinton, Arkansas. That was my first thought.

Q. And how about -- were you asked [about]. . . .[t]he $27,600 check to Bill Clinton?

A. Have I seen it? Is that the question?

Q. Yes.

A. I think it was shown to me when I was in the grand jury.

Q. Had you ever seen that?

A. I had never seen it before, I mean, to my knowledge. It was so many years ago. I don't remember what year but it was 14 years ago or something. I don't remember ever having seen that before. I don't know why I would have seen it before.[322]

Mrs. McDougal later testified that even though there were documents introduced into evidence showing the connection between the amount owed on the Clinton loan and the amount

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dismiss the pending counts of the indictment.

[322] Tr. at 1845-46, United States v. S. McDougal, No. LR-CR-98-82 (E.D. Ark. Mar. 24, 1999) (testimony of Susan McDougal). The Independent Counsel conducted an exhaustive search of Arkansas land records but was unable to find any records identifying any property associated with the McDougals or any McDougal affiliated entity in Clinton, Arkansas, or in surrounding Van Buren County, at the time of this payment. Grand Jury Subpoena No. 76 (E.D. Ark. Jan. 12, 1994); Grand Jury Subpoena No. 212 (E.D. Ark. Mar. 29, 1994).

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of the check drawn on the trustee account, she still had no personal knowledge of the loan.[323] She agreed she wrote the check, but only because Jim McDougal asked her to do so.[324]

C. The Clintons and the McDougals Had Varied Roles Managing and Funding Whitewater.

1. The Clintons and the McDougals Assumed Different Responsibilities During the Whitewater Venture.

a. The McDougals Exercised De Facto Control over Whitewater from Approximately 1978 until 1986.

The McDougals managed Whitewater's finances from the outset in 1978 until about 1986, when Jim McDougal suffered a nervous breakdown and moved to California.[325] During these eight years, the McDougals kept the books and records, and the Clintons allowed Jim McDougal to manage the finances as he saw fit.[326] The McDougals or their authorized employees signed the company's checks, and no documents available to this office's investigation suggested the Clintons signed any of the company's checks.[327] One excerpt from corporate minutes was

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[323] Tr. at 2101, United States v. S. McDougal, No. LR-CR-98-82 (E.D. Ark. Mar. 30, 1999) (testimony of Susan McDougal).

[324] Id. at 2098-2102 (testimony of Susan McDougal).

[325] J. McDougal 8/96-6/97 Int. at 81; J. McDougal 9/96 Int. at 11.

[326] J. McDougal 9/96 Int. at 4-5.

[327] See C. James 5/5/96 Senate Whitewater Comm. Depo. at 235 (stating that, along with Jim and Susan McDougal, he was the only one authorized to sign Whitewater checks); see also Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation at 23-24 (Apr. 24, 1995). The available documentation did not include a corporate minute book for Whitewater. See Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation at 24 (Apr. 24, 1995).

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located, apparently drawn up at the request of a bank.[328] There was no indication based on the reconstructed books and records that regular board meetings were held, meaning that the Clintons' participation in such meetings was limited or non-existent.

The Clintons stated they considered themselves "passive investors" and relied on the McDougals to manage and operate Whitewater.[329] The Clintons relied on the McDougals to tell them when to make a financial contribution to the venture and believed they did so whenever requested.[330] The Clintons signed extensions or renewals of various Whitewater-related bank loans, but did not receive annual or regular reports or financial summaries.[331] As described above, the Clintons were involved in or aware of certain loan transactions related to Whitewater Development during the venture's first eight years.

The Clintons were not told of all the actions by Whitewater Development, and did not know what the McDougals spent on Whitewater, the sources of money, or the nature of an expense.[332] President Clinton said that after they invested in Whitewater, "it just sort of held its own. We didn't have to put any more money into it for a few years. So, we didn't have to talk about it."[333] Mrs. Clinton said she had infrequent contact with McDougal in the early 1980s.[334]

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[328] J. McDougal 4/2/97 GJ at 41-42.

[329] W. Clinton 5/24/95 RTC Interrog. Resp. at 35-36; see also Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation at 2 (Apr. 24, 1995).

[330] W. Clinton 5/24/95 RTC Interrog. Resp. at 7.

[331] H. Clinton 5/24/95 RTC Interrog. Resp. at 46.

[332] Id.

[333] W. Clinton 7/22/95 Depo. at 65.

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Letters to or from the Clintons were relatively infrequent, and available documents suggest that the Clintons corresponded less than twenty times on Whitewater from the project's inception in 1978 to the end of 1986.[335]

b. Hillary Clinton Took a More Active Role in Whitewater in 1986.

i. Problems at Madison Guaranty.

In a report to Madison Guaranty's directors dated June 1, 1984, the Federal Home Loan Bank Board ("FHLBB") warned that "[t]he viability of the institution is jeopardized through the institution's current investment and lending practices in real estate development projects."[336] As discussed in more detail in Part B, Chapter 1 of this Report, FHLBB regulators presented the Madison Guaranty board with a Cease and Desist Order on July 11, 1986, leading to McDougal's immediate resignation. This regulatory scrutiny over management of Madison Guaranty led Betsey Wright, Governor Clinton's Chief of Staff, to send a written query to the Governor:

> White Water stock
> (McDougal's Company)

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[334] H. Clinton 2/14/96 FDIC Int. at 32.

[335] See Letter from Hillary Rodham, Rose Law Firm attorney, to James B. McDougal, President of Madison Guaranty Savings & Loan (Oct. 12, 1981) (Doc. No. GS-00013925); Letter from Jim McDougal to Hillary Rodham (Oct. 6, 1981) (Doc. No. GS-00013926); Letter from James B. McDougal to Hillary Rodham (Oct. 4, 1984) (Doc. No. GS-00014506); Letter from James B. McDougal to Governor and Mrs. Bill Clinton (Dec. 16, 1986) (Doc. No. GS-00014013); see also Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation at 24 (Apr. 24, 1995).

[336] FHLBB Office of Examinations and Supervision, Report of Special Limited Examination (as of Jan. 20, 1984) (Doc. Nos. 99000270 through 71); see also Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation at 8 (Apr. 24, 1995).

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Do you still have? (pursuant to Jim's current problems
If so, I'm worried about it.[337]

Governor Clinton replied on the bottom of Wright's memorandum:

No - Don't have any more

B[338]

President Clinton says he learned at some point that Madison Guaranty was in trouble and that appropriate action would have to be taken.[339] He remembered being a little surprised at Madison Guaranty's problems; it had been his impression that most of the troubled savings and loans were "making crazy loans out of state, or were building indoor country clubs in Dallas, or what all stuff they were doing."[340]

On November 14 and December 16, 1986, Jim McDougal sent the Clintons a status report, offering to buy them out of Whitewater.[341] The Clintons remembered McDougal's offer.[342] They said McDougal felt guilty the project was a failure, though it might have utility as a loss for tax purposes.[343] The Clintons were initially in favor of selling out because they had spent a great

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[337] Memo from Betsy Wright to Governor Clinton (July 14, 1986) (Doc. No. 1221-00000901).

[338] Id. (emphasis in original).

[339] W. Clinton 7/22/95 Depo. at 58.

[340] Id.

[341] J. McDougal 4/3/97 GJ at 32-34. See Letter from James B. McDougal to Mr. and Mrs. Bill Clinton (Nov. 14, 1986) (Doc. No. DKRT200475).

[342] W. Clinton 7/22/95 Depo. at 43; H. Clinton 5/24/95 RTC Interrog. Resp. at 57.

[343] W. Clinton 7/22/95 Depo. at 43; H. Clinton 5/24/95 RTC Interrog. Resp. at 57.

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deal of money and received no return,[344] but they did not want to lose their equity while remaining personally liable on the mortgage for the Lot 13 model home.[345] The Clintons determined that because they could not get released from this loan, it made no sense to surrender their Whitewater equity to the McDougals.[346]

ii. Jim McDougal Became Too Ill to Manage Whitewater.

Jim McDougal said that because of illness between the end of 1986 and 1992, he had no involvement in the administration or corporate responsibilities of Whitewater Development.[347] Mrs. McDougal and Mrs. Clinton took over various aspects of the corporate responsibilities.[348] In an interview with ABC News, Mrs. McDougal said that since "Jim was so sick," she tried to

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[344] H. Clinton 5/24/95 RTC Interrog. Resp. at 57.

[345] Id.

[346] W. Clinton 7/22/95 Depo. at 43; H. Clinton 5/24/95 RTC Interrog. Resp. at 57; see also Prime Time Live: Tr. of Diane Sawyer Interview of Susan McDougal at Doc. No. 2053-00000078 (ABC television broadcast, Aug. 30, 1996) (quoting Susan McDougal: "Since they [the Clintons] had responsibility on the loan, she [Mrs. Clinton] felt she should not give the company to Jim") (transcript contains additional interview portions not included in the public broadcast).

[347] J. McDougal 9/96 Int. at 11.

[348] Id. Susan McDougal recounted in an ABC News interview how she and Mrs. Clinton became more involved with Whitewater after McDougal fell ill. Susan McDougal said she once approached Mrs. Clinton about refinancing a Whitewater loan so incoming lot payments would cover loan payments, but Mrs. Clinton dismissed the idea and said, "I'll talk to the bank myself and I'll handle it myself." Prime Time Live: Tr. of Diane Sawyer Interview of Susan McDougal at Doc. Nos. 2053-00000087 through 88 (ABC television broadcast, Aug. 30, 1996) (transcript contains additional interview portions not included in the public broadcast). Susan McDougal said she replied: "'Okay, talk with the bank directly,' and my heart and my conscience were clear because I had structured it and it was working, and I felt good about it and I went off to California, knowing that Whitewater, as far as I was concerned, was taken care of." Id. at 88.

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keep their companies "going and everything."[349] Mrs. Clinton said that since her husband was fully occupied as Governor, she monitored Whitewater to ensure that its affairs were conducted in accordance with the law.[350]

Jim McDougal said around this time that Mrs. McDougal told him the Clintons wanted Whitewater's records.[351] Mrs. McDougal said Governor Clinton called and asked her for the documents.[352] She told him, "Certainly. Please. You can have everything."[353] Jim McDougal remembered Susan taking the Whitewater records out of a banker's box so that her brother, Bill Henley, could deliver them to the governor's mansion.[354] Jim McDougal thought Susan documented the transfer.[355]

iii. Mrs. Clinton's Whitewater Management.

Mrs. Clinton tried to make sure escrow contracts were signed, loan renewals were executed, real estate taxes were paid, and tax returns and franchise tax reports were filed.[356] Mrs.

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[349] Prime Time Live: Tr. of Diane Sawyer Interview of Susan McDougal at Doc. No. 2053-00000085 (ABC television broadcast, Aug. 30, 1996) (transcript contains additional interview portions not included in the public broadcast).

[350] H. Clinton 5/24/95 RTC Interrog. Resp. at 13.

[351] J. McDougal 8/96-6/97 Int. at 31.

[352] Prime Time Live: Tr. of Diane Sawyer Interview of Susan McDougal at Doc. No. 2053-00000093 (ABC television broadcast, Aug. 30, 1996) (transcript contains additional interview portions not included in the public broadcast).

[353] Id.

[354] J. McDougal 8/96-6/97 Int. at 31. McDougal remembered that Henley later confirmed this fact. See Henley 6/18/96 GJ at 39-42; see also James B. Stewart, Blood Sport 155 (1996).

[355] J. McDougal 8/96-6/97 Int. at 31.

[356] H. Clinton 5/24/95 RTC Interrog. Resp. at 13-14.

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Clinton accepted lot payments and made loan and tax payments.[357] Around 1988, Mrs. Clinton paid Whitewater's delinquent taxes and handled certain other matters.[358]

Sometime in 1987, Mrs. Clinton learned that Hilman Logan, who had purchased Lot 13 with the model home, had declared bankruptcy.[359] She asked Allen Bird, a Rose Law Firm ("Rose") lawyer, to help her protect the Clintons' rights under the escrow contract.[360] Mrs. Clinton said Bird negotiated an arrangement with the Hilman Logan estate and the federal bankruptcy trustee in Mississippi allowing the Clintons to pay $8,000 into the bankruptcy court to purchase the Logan estate's equity in Lot 13.[361] Wade then found someone willing to pay $27,500 for the lot.[362] This allowed the Clintons to pay off the loan at Security Bank in Paragould, recover their $8,000 personal investment, and make $1,640, which was reported as a capital gain on their 1988 taxes.[363]

On September 5, 1989, Wade wrote Mrs. Clinton and said that Whitewater Development needed a president and a secretary to sign a deed to go into the escrow file.[364] Neither Governor

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[357] Id.

[358] Id. at 21-24.

[359] Id. at 23.

[360] Id.

[361] Id. at 24.

[362] Lauramoore 2/26/97 Int. at 1; see also Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation at 134 (Apr. 24, 1995).

[363] Schedule D, Form 1040, Capital Gains and Losses, William J. Clinton and Hillary Rodham (1988) (Doc. No. DEK000881).

[364] Letter from Chris V. Wade to Hillary Clinton (Sept. 5, 1989) (Doc. No. DKRT700148).

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nor Mrs. Clinton was then an officer or director.[365] On October 28 and November 28, 1988, Mrs. Clinton wrote and asked Jim McDougal for power of attorney on Whitewater.[366] The November 28 letter read:

> I am enclosing a Power of Attorney for you to sign, authorizing me to act on your behalf with respect to matters concerning Whitewater Development Corp.

The letter also discussed the remaining Whitewater property:

> We are trying to sell off the property that is left and get out from under the obligations at both Flippin and Paragould.[367]

Mrs. Clinton received no response from the McDougals.[368]

On June 21, 1990, Mrs. Clinton signed documents stating that as of December 31, 1987, and December 31, 1988, she was Whitewater Development's president.[369] McDougal said all the corporation did at this point was funnel money from customers to the banks to cover interest.[370] Whitewater's 1987, 1988, and 1989 federal income tax returns (and state franchise tax reports for 1987 and 1988) were filed in June 1990.[371] McDougal said that in 1990, Governor Clinton asked

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[365] H. Clinton 5/24/95 RTC Interrog. Resp. at 60-63, 69, 70.

[366] Id. at 61-62. See Senate Special Comm. to Investigate Whitewater Dev. Corp. and Related Matters, Final Report, S. Rep. No. 280, 104th Cong., 2d Sess. 307 (1996).

[367] Letter from Hillary Rodham Clinton to Jim McDougal (Nov. 28, 1888) (Doc. No. 212-00006075).

[368] H. Clinton 5/24/95 RTC Interrog. Resp. at 62.

[369] Corporate Franchise Tax Report for Whitewater Development Company, Inc. (1988, 1989) (Doc. Nos. DKRT700618 through 19).

[370] J. McDougal 4/2/97 GJ at 35.

[371] Mrs. Clinton said that Rose manager Carolyn Huber completed the necessary forms following instructions she received from the Secretary of State's office. H. Clinton 5/24/95 RTC Interrog. Resp. at 14; see also Pillsbury Madison & Sutro LLP, Madison Guaranty Savings &

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him to reimburse them for the $3,000 they paid for taxes.[372] McDougal said Clinton asked this a day or two after McDougal was acquitted in his first trial.[373] McDougal told Governor Clinton he could not help and that he should contact Sam Heuer, the attorney representing McDougal.[374] A month later, Heuer had lunch with Mrs. Clinton to discuss Whitewater matters, including dissolution.[375]

In 1991, Mrs. Clinton mentioned to Rose partner William Kennedy III that the Whitewater investment was a problem.[376] Kennedy offered to help.[377] Mrs. Clinton provided Whitewater's records, which Kennedy said were in shambles.[378] Mrs. Clinton provided Kennedy an overview of the investment so that he could understand what the records were.[379] Kennedy reviewed the records and concluded that franchise taxes had not been paid.[380]

Mrs. Clinton worked with many members of the 1992 presidential campaign team -- including Webb Hubbell, Vince Foster, and Jim Blair -- to define her role in Whitewater in

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Loan and Whitewater Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation at 24 (Apr. 24, 1995).

[372] J. McDougal 4/3/97 GJ at 46-48.

[373] J. McDougal 8/96-6/97 Int. at 60. President Clinton remembered that it was possible that he called McDougal and said congratulations and talked to him briefly after McDougal's acquittal. W. Clinton 7/22/95 Depo. at 63.

[374] J. McDougal 4/3/97 GJ at 46-47.

[375] Heuer 10/8/97 GJ at 5, 28-29.

[376] W. Kennedy 12/17/97 GJ at 74-75.

[377] Id. at 75.

[378] Id. at 75-76, 79, 83.

[379] Id. at 76.

[380] Id. at 88.

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response to press inquiries. Blair and Loretta Lynch met with McDougal and Heuer, and McDougal told them about Whitewater.[381] Blair wrote to Heuer, that the "Clinton's . . . will characterize [Whitewater] as a bad business deal where money was lost."[382] Blair also wrote:

> Although the Statute of Limitations may not have run as to civil or criminal liability on the part of anyone who may have misused funds of [Whitewater] (assuming such activity was concealed) there is no intent under the current state of developments to try to prosecute, sue or even point the finger at any such person, if any.[383]

Blair wrote he knew the McDougals had been "through a lot of trauma," that the Clintons "are sure that the accusations made by the New York Times about Jim [McDougal] are not true" and that the McDougals "were taken advantage of."[384]

2. The Final 1994 Lyons Report, the RTC, and the Independent Counsel Agreed on the Clintons' and McDougals' Fundings of Whitewater.

Two previous reports -- the Clinton campaign's commissioned "Lyons Report" and the RTC's commissioned Pillsbury Madison & Sutro Report -- detailed the Clintons' and the McDougals' financial contributions to the Whitewater venture. This section reports on the additional investigation of that issue completed by the Independent Counsel. All three investigative entities reached substantially the same conclusions:

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[381] Jim Blair's notes (Mar. 11, 1992) (Doc. No. 264-0020696).

[382] Letter from Jim Blair, General Counsel for Tyson Foods to Sam Heuer, Attorney for Jim McDougal (Mar. 16, 1992) (Doc. No. DEK005290).

[383] Id.

[384] Id.

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CLINTON CONTRIBUTIONS	
Final Lyons Report (as Amended in 1994)	**$46,635.75**[385]
RTC/Pillsbury Madison & Sutro	**$42,192.00**[386]
Independent Counsel	**$36,862.33**[387]

There was also reasonable agreement between the Independent Counsel and the Final Lyons Report (as amended in 1994) over the amounts contributed by the McDougals and entities they controlled contributed towards the Whitewater partnership and corporation:

McDOUGAL CONTRIBUTIONS	
Final Lyons Report	**$92,200.00**[388]
Independent Counsel Report	**$80,076.03**[389]

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[385] Letter from James N. Lyons, Attorney, to David E. Kendall, Attorney for the Clintons, at 2 (Mar. 22, 1994) (Doc. Nos. 863-00000006-07).

[386] Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation (Apr. 24, 1995); Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Supplemental Report to the Resolution Trust Corporation (December 13, 1995).

[387] The Clintons actually invested a total of $42,553.53 in Whitewater. They also received the benefit of a $5,691.20 payment that Whitewater Corporation made on February 22, 1982 towards a personal loan that Governor Clinton had at Citizens Bank & Trust, Jonesboro, Arkansas (Doc. Nos. DEK500067 through 68); see also letter from J. McDougal to W. Clinton (Mar. 1, 1982) (stating that he had made a Whitewater Development payment towards Governor Clinton's personal note at Citizens Bank of Jonesboro as part of the Clintons investment in Whitewater). The net funds the Clintons advanced to Whitewater were therefore $36,862.33.

[388] Letter from Norris L. Weese, Vice President of Patten, McCarthy & Associates, Inc. and Leslie A. Patten, President of Patten, McCarthy & Associates, Inc. to James M. Lyons, Attorney at 7 (Mar. 23, 1992) (Doc. Nos. 863-00000171-77).

[389] See Appendix 4 of this Volume.

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Pillsbury Madison & Sutro did not determine the total amount of the McDougals' contributions to Whitewater over its entire lifespan. It did determine that the McDougals' contributed $158,523 towards Whitewater through the end of fiscal year 1986.[390]

a. The Final 1994 Lyons Report Determined That the Clintons Contributed Approximately $46,635.75 and the McDougals $92,200.00 to Whitewater.

In March 1992, Mickey Kantor, chairman of the Clinton presidential campaign, and Governor and Mrs. Clinton asked James Lyons, a Denver attorney and friend of the Clintons, to review the Clintons' Whitewater involvement.[391] Lyons collected documents from the Rose Law Firm, the Clintons, and other public sources.[392] Seven file boxes of Whitewater material came from the Rose Law Firm.[393] Lyons retained Norris Weese of Patten, McCarthy & Associates ("Patten McCarthy"), a Denver accounting firm, to conduct the review.[394]

On March 18, 1992, Patten McCarthy submitted its draft report ("Draft Lyons Report") to Lyons, which he reviewed with Mrs. Clinton.[395] Mrs. Clinton received faxes on March 19 and 20 about the accounting and, on at least one occasion, received a complete fifty-four page draft of

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[390] Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation at 3 (Apr. 24, 1995).

[391] Lyons 7/25/95 GJ at 6; Lyons 7/30/96 GJ at 131-32.

[392] Lyons 7/25/95 GJ at 6.

[393] Lyons 7/30/96 GJ at 65.

[394] Id. at 73.

[395] Id. at 147.

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the report.[396] Mrs. Clinton made detailed handwritten notes on the substance of the report.[397] The March 20 fax Mrs. Clinton received included the accountant's nine-page summary letter.[398] The fax cover page contained the handwritten notation, "To V Foster 375-1309," Rose's fax number.[399]

The final accounting reduced the Clintons' contributions for lack of corroborating documents.[400] On March 23, these conclusions, colloquially known as the "Final Lyons Report," were made public,[401] concluding that the Clintons provided $68,900 to Whitewater from 1978 until 1991.[402] The report also said that as of May 31, 1991, the McDougals provided $92,200 to Whitewater through themselves or entities they controlled,[403] or one-third more than the Clintons.[404] Patten McCarthy did not consult with Jim McDougal.[405]

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[396] Facsimile cover sheet and Draft Lyons Report (Mar. 19, 1992) (Doc. Nos. DEK 001129 through 83).

[397] H. Clinton handwritten notes (undated) (Doc. No. DEK 009752); Draft Lyons Report with handwritten notes (Mar. 20, 1992) (Doc. Nos. DEK 009757 through 68).

[398] Facsimile cover sheet and letter from Les Patten to Hillary Rodham Clinton (Mar. 20, 1992) (Doc. Nos. DEK 0009827 through 33). The cover sheet identifies ten pages to be transmitted, but only seven pages were produced to this Office.

[399] Facsimile cover sheet from Les Patten to Hillary Rodham Clinton (Mar. 20, 1992) (Doc. No. DEK 009827).

[400] Lyons 7/30/96 GJ at 161-62.

[401] See Final Lyons Report (Mar. 23, 1992) (Doc. Nos. 863-00000171 through 80).

[402] Id.

[403] These entities included Great Southern Land Company, Inc.; Flowerwood Farms, Inc; Pembrook Manor, Inc.; McDougal & Associates; Rolling Manor, Inc. ("Rolling Manor"); Tucker-Smith-McDougal; Smith-McDougal; and Madison Marketing. Final Lyons Report at 1 (Mar. 23, 1992) (Doc. No. 863-00000171).

[404] See Final Lyons Report at 7 (Mar. 23,1992) (Doc. No. 863-00000177). Campaign

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In March 1994, the Final Lyons Report calculations were amended when the 1982 Clinton check to Madison Bank for $20,744.65 was found to be unrelated to Whitewater.[406] President Clinton was reviewing his late mother's autobiography in 1994 when he remembered that this Madison Bank loan was to purchase his mother's house and not for Whitewater.[407] Lyons subtracted the $20,744.65 loan and related interest of $1,500, leaving the Clintons' investment at $46,636.75. The Clintons' total investment was less than half the McDougals'.[408]

b. The RTC Found the Clintons Contributed $42,192 to Whitewater.

The RTC retained outside counsel, Pillsbury Madison & Sutro ("Pillsbury Madison") to investigate Madison Guaranty and Whitewater Development's relationship and to issue a report.[409] On April 24, 1995, Pillsbury Madison issued its Preliminary Report on Madison Guaranty Savings & Loan and Whitewater Development Company, Inc. A Supplemental Report followed on December 13, 1995. Pillsbury Madison concluded that the Clintons contributed

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aide Loretta Lynch said the campaign did not release documents to support this figure "[b]ecause we knew at the time we didn't have everything." Lynch 3/15/95 GJ at 180.

[405] Weese 8/29/94 Int. at 2-3.

[406] See Letter from James M. Lyons to David E. Kendall (Mar. 22, 1994) (Doc. Nos. 863-00000006 through 07). Lyons 7/30/96 GJ at 130. President's News Conference (Mar. 24, 1994); see also Virginia Clinton Kelley, Leading with My Heart 239 (1994).

[407] See Letter from James M. Lyons to David E. Kendall (Mar. 22, 1994) (Doc. Nos. 863-00000006 through 07); see also Virginia Clinton Kelley, Leading with My Heart 239 (1994).

[408] Letter from James M. Lyons to David E. Kendall at 2 (Mar. 22, 1994) (Doc. No. 863-00000007). The Clintons later affirmed this figure in Interrogatory Responses submitted to the RTC. H. Clinton 5/24/95 RTC Interrog. Resp. at 66-67; W. Clinton 5/24/95 RTC Interrog. Resp. at 49.

[409] RTC Order of Investigation, in the matter of Madison Guaranty Savings & Loan

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$42,192 and the McDougals $158,523 to Whitewater.[410] The RTC and the Final 1994 Lyons Report figures were within $4,000 of each other on how much the Clintons contributed. The difference can be reconciled by making four minor adjustments to the total of the Lyons figure.[411] The largest correction is for a $1,636 mathematical error in Lyons' calculations.[412] Lyons conceded that the Pillsbury Madison reports were prepared with access to additional relevant records and two years additional time to focus on the accounting, without the "intensity of a presidential campaign[.]"[413]

c. The Independent Counsel Found That the Clintons Loaned or Advanced Approximately $36,862.33 and the McDougals $80,076.03 to Whitewater.

The Independent Counsel concluded that the Clintons contributed approximately $36,862.33 toward Whitewater Development's cash shortfall.[414] The McDougals, personally or through entities they controlled, contributed approximately $80,076.03 in cash to Whitewater. McDougal said he and his wife contributed more, partly due to his embarrassment over the

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(7236), McCrory, Arkansas (Feb. 4, 1994).

[410] Compare Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation at 132 (Apr. 24, 1995).

[411] Id. at 132-33.

[412] Id.

[413] Jim Lyons, Letter to the Editor, Wall St. J., Oct. 28, 1999.

[414] See Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation at 130 (Apr. 24, 1995).

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project's failure.[415] Mrs. Clinton said the McDougals never complained about the amount invested by the Clintons in Whitewater.[416]

i. The Independent Counsel Reconstructed the Available Books and Records.

Whitewater's financial books and records were incomplete compared to those ordinarily maintained by a corporation. The Independent Counsel reconstructed all available corporate documents relevant to the Clintons' and the McDougals' financial involvements in Whitewater. This Office tracked, through a computerized accounting program general ledger, the funds contributed by the Clintons and the McDougals. This ledger reflected transactions conducted through the Whitewater bank accounts, transactions entered from the Whitewater accountant's adjusted entries, off-book payments on the acquisition loans, and other off-book payments the shareholders and McDougal-related entities made. Pre-incorporation expenses the Clintons, McDougals, and McDougal-related entities paid were added and tracked in this reconstructed ledger. The reconstructed general ledger and pre-incorporation expenditures reflect all known Whitewater transactions involving the Clintons, the McDougals, and McDougal-controlled entities.

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[415] J. McDougal 9/96 Int. at 6.

[416] H. Clinton 4/22/95 Depo. at 20.

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ii. The Independent Counsel Determined That the Lyons Reports Overstated the Clintons' and McDougals' Contributions to Whitewater.

The Draft and Final Lyons Reports incorrectly identified the source of several payments in calculating the McDougals' or their businesses' contribution. The Independent Counsel determined that the Draft and Final Lyons Reports mistakenly attributed payments to Whitewater Development that were unrelated to Whitewater.

The Draft and Final Lyons Report also did not reflect reimbursements by the Clintons to the McDougals or misstated specific payment amounts. These payments are listed in Appendix 4 to this Part, along with their actual origins where the Independent Counsel was able to determine sources. Payments included in the Draft Lyons Report, inexplicably omitted from the Final Lyons Report, are also included.

D. The Clintons' Personal Tax Returns and the Whitewater Corporate Tax Returns Required Corrective Adjustments.

Investigation of the Clintons' Whitewater-related income tax focused on two areas, the Clintons' tax treatment of Whitewater-related transactions, including cash infusions to the corporation, and Whitewater corporate tax returns.

1. Improper Deductions and Unreported and Underreported Income Relating to Whitewater on the Clintons' Personal Tax Returns Totaled $26,348.

The Whitewater partners' failure to file partnership tax returns for the years 1978 and 1979 had no effect on the Clintons' personal tax liability. The partners were personally liable for the pre-incorporation loans and were entitled to deduct their pro rata share of the interest expense on their personal tax returns.

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In 1979, Whitewater's second year, the partnership's original 230 acres were transferred to Whitewater Development, a corporation taxable under Subchapter C of the Internal Revenue Code.[417] The Clintons' ownership interest in the profits and losses of the real property continued through their ownership of fifty percent of the Whitewater Development stock.[418]

After evaluating the Clintons' treatment of Whitewater on their individual income tax returns, the Independent Counsel determined that although the returns were not in full compliance with federal tax laws, there was no intent to evade federal income tax. The following chart details the income and itemized deduction adjustments the Clintons made from 1978 through 1992, and the corresponding adjustments (including one favorable to the Clintons) that IRS employees made that were assigned to the investigation, and which this Office reviewed.

FISCAL YEAR	ITEM ADJUSTED	PER TAX RETURN	AS CORRECTED	ADJUSTMENT
1979	Interest Expense	$11,987.00	$9,590.02	$2,396.98[419]

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[417] See 26 U.S.C. §§ 301-385.

[418] Stock Certificate from Whitewater Development Co., Inc. to Hillary Rodham for 150 shares (June 18, 1979) (Doc. Nos. DEK004381 through 82); see also Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation at 20 (Apr. 24, 1995).

[419] A review of Whitewater Development's books showed that $2,400.00 of the total amount the Clintons deducted as interest expense in 1979 consisted of a loan to Whitewater for that amount. Whitewater Development Co., Inc. ledger sheet (May 31, 1980) (Doc. No. DEK000575). But see Letter from David E. Kendall to John D. Bates, Office of the Independent Counsel (May 24, 1996) (enclosing a letter sent to Hon. James A. Leach, Chairman, Committee on Banking and Financial Services, United States House of Representatives, where Kendall argued that the deduction was proper, noting that the IRS audited the Clintons' 1979 federal tax returns in 1982 and did not make any changes).

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FISCAL YEAR	ITEM ADJUSTED	PER TAX RETURN	AS CORRECTED	ADJUSTMENT
1980	Interest Expense	$13,350.00	$4,350.00	$9,000.00[420]
1982	Income from Repayment of Personal Loan by Whitewater Development	$0.00	$5,691.20	$5,691.20[421]
	Interest Expense	$0.00	$691.20	$(691.20)[422]

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[420] Check No. 598 from the account of Bill Clinton and Hillary Rodham signed by Hillary Rodham for $9,000 (Aug. 23, 1980) (Doc. No. DEK000398). Mrs. Clinton omitted the payee. The reverse side of the check was negotiated and stamped by Citizens Bank, on September 5, 1980. The principal on acquisition Loan No. 5885 was reduced by $9,000.00 on September 5, 1980. This conclusion was also reached in the Lyons Report. See Draft Lyons Report at 5 (Mar. 18, 1992) (Doc. No. DEK001135). But see Letter from David E. Kendall to John D. Bates, Office of the Independent Counsel (May 24, 1996) (enclosing a letter sent to Hon. James A. Leach, Chairman, Committee on Banking and Financial Services, United States House of Representatives, where Kendall argued that although documents of the deduction were not dispositive, additional facts about the $9,000 interest deduction provide support for its inclusion).

[421] Payment of $5,691.00 was made by the Whitewater Corporation on the Clintons' personal Loan No. 585-070 at Citizens Bank & Trust, Jonesboro, Arkansas on February 22, 1982. The Clintons failed to report this income on their 1982 tax return, which was taxable at that time because it was a recovered amount previously deducted on their 1978 return. But see Letter from David E. Kendall to John D. Bates, Office of the Independent Counsel (May 24, 1996) (enclosing a letter sent to Hon. James A. Leach, Chairman, Committee on Banking and Financial Services, United States House of Representatives, where Kendall said, "[b]ased on the contemporaneous statement in Jim McDougal's letter to Mr. Clinton dated March 31, 1982, however, [Whitewater Development]'s payment of $5,691 appears to have been a repayment of a Whitewater-related loan, which would have no federal income tax consequences").

[422] Whitewater Development paid $5,691.00 on the Clintons personal loan at Citizens Bank & Trust, Jonesboro, Arkansas, fully repaying the loan. The interest portion of the loan pay off is deductible by the Clintons. The Daily Trial Balance of Madison Bank showed that on February 22, 1982, the loan balance was $5,000.00, with accrued interest of $719.27. On February 24, 1982, the Daily Trial Balance showed a loan balance of $0. Daily Trial Balance of Madison Bank (Feb. 22, 1982) (Doc. Nos. 145-0000006 through 08). The portion of the final payment attributable to interest is the amount of the check over $5,000.00, or $691.20. The Clintons are entitled to this additional interest deduction of this amount on their 1982 tax returns.

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FISCAL YEAR	ITEM ADJUSTED	PER TAX RETURN	AS CORRECTED	ADJUSTMENT
1984	Interest Expense	$2,811.20	$0.00	$2,811.00[423]
1985	Interest Expense	$2,322.00	$0.00	$2,322.00[424]
1987	Interest Expense	$2,561.00	$0.00	$2,561.00[425]

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[423] Whitewater Development made and deducted this interest payment as a tax expense. Whitewater Development Check No. 121, dated October 4, 1984, was drawn on Madison Bank in the amount of $4,811.19 and was posted to Loan No. 957-585 on October 10, 1984. Check No. 121 from the account of White Water Development Co., Inc., signed by James B. McDougal payable to Security Bank for $4,811.19 (Oct. 4, 1984) (Doc. Nos. GS-00014509 through 10). $2,811.19 was applied to interest and the remainder to principal. Loan No. 957-585 was acquired in the name of Bill Clinton to pay off Loan No. 23039 at Madison Bank, which Mrs. Clinton had taken out in order to build the model home on Lot 13. The liability Loan No. 957-585 represented was considered Whitewater Development's corporate liability and not a personal liability of the Clintons. The Lyons Report conceded that this deduction was improper. See Draft Lyons Report at 4 (Mar. 18,1992) (Doc. No. DEK001134).

[424] Whitewater Development made and deducted this interest payment as an expense. Whitewater Development Check No. 145, dated November 7, 1985 was drawn in the amount of $7,322.42, and posted to Loan No. 957-585 on December 12, 1985. Check No. 145 from the account of White Water Development Co., Inc. signed by James B. McDougal payable to Security Bank of Paragould for $7,322.42 (Nov. 7, 1985) (Doc. Nos. GS-00014519 through 20). $2,322.42 went to interest and the remainder to principal. The loan was a corporate liability and not a personal liability of the Clintons. The Lyons Report conceded that this deduction had been improper. See Lyons Report at 4 (Mar. 18, 1992) (Doc. No. DEK001134).

[425] The Clintons' Federal Income Tax Return for 1987 reported an interest deduction of $2,561.00, comprised of various payments on Security Bank Loan Nos. 957-585 & 838-608. The loan was a corporate liability and not a personal liability of the Clintons. Handwritten sheets titled Interest Paid 1987 (undated) (Doc. Nos. 133-00005138; 319-00003735 through 36). But see Letter from David E. Kendall to John D. Bates. Office of the Independent Counsel (May 24, 1996) (enclosing a letter sent to Hon. James A. Leach, Chairman, Committee on Banking and Financial Services, United States House of Representatives, where Kendall said: "Since Mr. and Mrs. Clinton took a deduction on their 1986 federal income tax return for the $1,636 of interest that they paid by check on December 28, 1986, an interest deduction for the same amount could not be taken in 1987. In addition, interest paid by Hillman Logan in 1987 was not deductible").

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FISCAL YEAR	ITEM ADJUSTED	PER TAX RETURN	AS CORRECTED	ADJUSTMENT
	Real Estate Taxes for Whitewater Development	$1,275.15	$0.00	$1,275.15[426]
1988	Gain on Sale of Lot 13	$1,640.00	$3,313.22	$1,673.22[427]
1992	Sale of Whitewater Development Stock	$1,000.00	$500.00	$(500.00)[428]
Total Adjustment:				**$26,539.35**

The December 1992 stock transfer from the Clintons to McDougal was a taxable event reported on the Clintons' 1992 individual income tax return.[429] The document reflecting the transaction was styled "Assignment of Interest Separate from Certificate and Indemnity Agreement." President-elect Clinton, Mrs. Clinton, and Jim McDougal signed this document,

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[426] In 1988, property taxes were assessed against Whitewater Development on property it owned. Treasury Regulation 1.164-1 provides taxes are deductible only by the person upon whom they are imposed. Although Mrs. Clinton paid the taxes assessed, neither she nor her husband were imposed with the tax and therefore could not deduct it. Check No. 2353 from the account of Bill Clinton or Hillary Rodham Clinton signed by H R Clinton payable to Ozark Realty Co. for $1,275.15 (Oct. 28, 1988) (Doc. No. DEK000405); Letter from Hillary Rodham Clinton to Rosalee Wade (Oct. 28, 1988) (Doc. No. 133-00005374).

[427] The Clintons erroneously reported the cost basis on the sale of Lot 13 as $22,118.00. The actual basis was $20,444.78, due to payments made by Hilman Logan of principal and interest on the bank debt until September 1987. Worksheet for William and Hillary Clinton Capital Gain 1988 (Apr. 11, 1989) (133-00005362); see also Letter from David E. Kendall to John D. Bates, Office of the Independent Counsel (May 24, 1996).

[428] The Clintons reported a $1,000.00 long-term capital gain on their 1992 Federal Income Tax Return, from the sale of 500 shares of Whitewater but neglected to claim their $500.00 basis in the stock. §§ 1001, 1011, 1012, and 1016 of the 1986 IRS Code governed the gain from the sale of stock. The basis in the stock was its cost, $500.00. The other funds advanced to or paid for Whitewater were treated as loans, not payments to capital, and thus would not be considered in determining the basis of the stock. The sales price of $1,000.00, less the adjusted basis of $500.00, resulted in a recognizable long-term capital gain in 1992 of $500.00.

[429] William J. & Hillary R. Clinton 1992 Federal Income Tax Return (1992) (Doc. No.

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with McDougal signing as Whitewater Development's authorized representative and on his personal behalf as grantee.[430]

The Stock Assignment released the Clintons from any liability to Jim McDougal personally.[431] For tax purposes, the Clintons treated this release as having no value, and their 1992 Form 1040 referred to no release from Whitewater Development related liabilities they may have owed the McDougals.[432]

2. Whitewater Development Company's Corporate Tax Returns Corrections Reduced Reported Losses from ($115,588.60) to ($80,290.09).

The Independent Counsel also reviewed Whitewater Development's corporate tax returns. In 1979, the partnership's real estate assets were transferred to Whitewater Development, a corporation taxable under Subchapter C of the Internal Revenue Code.[433] The Clintons' ownership interest in the profits and losses continued through their ownership of fifty percent of the Whitewater Development stock.[434] Because Whitewater Development always operated at a loss, no adjustments would have created an additional tax obligation for the Clintons. The

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IJ-00001363).

[430] See Assignment of Interest Separate from Certificate and Indemnity Agreement (Dec. 22, 1992) (Doc. Nos. 777-00000364 through 67).

[431] See id.

[432] William J. & Hillary R. Clinton 1992 Federal Income Tax Return (1992) (Doc. No. IJ-00001363). There was no discharge of indebtedness issue associated with the Clintons' sale of their Whitewater stock since they received no income or economic benefit. Additionally, no issue existed because all loans for which the Clintons were personally liable had already been paid.

[433] See 26 U. S. C. §§ 301-385.

[434] See Assignment of Interest Separate from Certificate and Indemnity Agreement (Dec.

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following chart compares income filed on Whitewater Development Corporate Tax Returns for fiscal years 1980-1992 with income as reconstructed by the Independent Counsel.[435]

	PER INCOME TAX RETURN	INDEPENDENT COUNSEL ADJUSTMENTS	CORRECTED TOTALS
INCOME:			
Gross Profit	$ 29,833.22	$ 26,068.42	$ 55,901.64
Interest Income	$ 82,612.27	$ 14,003.71	$ 96,615.58
Income from Defaults	$ 22,424.32	$ 22,424.32	
Other Income	$ 39,695.76	$(24,810.11)	$ 14,885.65
TOTAL INCOME	**$152,141.25**	**$ 37,686.34**	**$189,827.59**

The following chart compares deductions filed on Whitewater Development Corporate Tax Returns for fiscal years 1980-1992 with deductions as reconstructed by the Independent Counsel.

	PER INCOME TAX RETURN	INDEPENDENT COUNSEL ADJUSTMENTS	CORRECTED TOTALS

22, 1992) (Doc. Nos. 777-00000364 through 67).

[435] The Independent Counsel determined that corrections to Whitewater's tax returns were needed for a variety of reasons: 1) adjustments to the reported basis of land; 2) corrections to allocation of principal and interest on lot payments; 3) corrections for bank service charges; 4) adjustments made for errors in basis computing; 5) errors due to defaults in earnest deposits; 6) adjustments to the actual interest expense deductible by the corporation on acquisition loans; 7) errors in the amount of survey expenses; 8) omitted commission expenses; 9) reclassified bank charges; 10) posting errors; 11) unreported insurance premiums and expenses; 12) adjustments due to reclassification of full payment of a note receivable by a lot purchaser; 13) absence of working papers; 14) erroneous accountancy related to overdrafts; 15) unreported expenses for needed repairs; 16) lot payments not deposited; 17) unreported processing fees; 18) taxes paid by Ozark Escrow with Whitewater lot payments; and 19) real property taxes not paid by the corporation.

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	PER INCOME TAX RETURN	INDEPENDENT COUNSEL ADJUSTMENTS	CORRECTED TOTALS
DEDUCTIONS:			
Interest Expense	$ 146,609.49	$ 24,008.22	$170,617.71
Taxes	$ 1,217.99	$ 4,231.44	$ 5,449.43
Depreciation	$ 21,028.61	$(21,028.61)	
Advertising	$ 4,486.99		$ 4,486.99
Surveys and Plats	$ 8,210.33	$ (4,060.31)	$ 4,150.02
Professional Fees	$ 34,815.50	$(25,135.76)	$ 9,679.74
Insurance	$ 330.50	$ 441.50	$ 772.00
Office Expense	$ 62.00	$ 44.88	$ 106.88
Repairs	$ 4,453.60	$ 67.50	$ 4,521.10
Commissions	$ 37,350.60	$ 16,234.40	$ 53,585.00
Bank Charges	$ 2,330.00	$ 1,729.98	$ 4,059.98
Miscellaneous	$ 6,834.24	$ 5,854.59	$ 12,688.83
TOTAL DEDUCTIONS	**$ 267,729.85**	**$ 2,387.83**	**$270,117.68**
TAXABLE INCOME	**$(115,588.60)**	**$ 35,298.51**	**$(80,290.09)**

The Independent Counsel found no evidentiary basis upon which to pursue a tax-related criminal prosecution of the Clintons over either their personal filings or the corporate filings of Whitewater Development.[436] Those matters are now closed.

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[436] The Independent Counsel's resolution of questions concerning the Clintons' criminal liability for tax-related offenses does not resolve their civil tax liability, if any, because civil tax matters are not within the jurisdiction of this Office.

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3. Tax Treatment of Additional Income or Loss Arising from Outstanding Loans the Clintons Made to Whitewater.

While the Clintons were stockholders in Whitewater, they advanced, loaned, or paid expenses for the corporation totaling $42,553.53. They received the benefit of Whitewater Development paying off then-Governor Clinton's personal loan at Citizens Bank & Trust, Jonesboro, Arkansas, in the amount of $5,691.20.

Of the $42,553.53 the Clintons advanced, they deducted a total of $38,808.79 on their federal tax returns. The remaining $3,744.74 advanced to Whitewater by the Clintons may qualify as a bad debt deduction by them.

E. Crimes Jim McDougal and Chris Wade Committed Concerning Whitewater Development.

The investigation of Whitewater Development operations disclosed criminal conduct. In particular, the investigation identified several instances where Jim McDougal conducted illegal financial transactions for Whitewater Development's benefit. The investigation also discovered evidence of Wade's bankruptcy fraud concerning the sale of Lot 7 at Whitewater Estates.

1. Jim McDougal Committed Numerous Financial Crimes to Meet His Financial Obligations.

The initial criminal referral from the RTC prompted the Independent Counsel's investigation of Jim McDougal and Madison Guaranty,[437] which ultimately disclosed that McDougal committed various financial crimes involving defalcation, embezzlement, and misuse

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[437] RTC Crim. Ref. No. C-0004 (Aug. 31, 1992).

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of position and bank fraud that benefited Whitewater Development.[438]

a. McDougal's Financial Crimes with Madison Guaranty and Other McDougal-Controlled Entities, Including Whitewater Development, Were First Detailed in RTC Criminal Referral No. C-0004.

The RTC's Criminal Referral No. C-0004, submitted to the United States Attorney for the Eastern District of Arkansas and the Little Rock FBI field office on September 1, 1992, focused on the relationship between Madison Guaranty and other McDougal-related entities, including Whitewater Development.[439] The RTC's referral named Jim and Susan McDougal as suspects, and Governor and Mrs. Clinton as potential witnesses.[440]

The RTC's referral alleged that the McDougals' control of some twelve accounts at Madison Guaranty -- including the Whitewater Development account -- caused insufficiently funded checks written on the Whitewater Development account to pay Whitewater Development's obligations at other banks:

> Between February 1984 and July 1987, James B. McDougal, Susan H. McDougal, Lisa A[u]nspaugh, Jim Guy Tucker, Stephen A. Smith, Bill Clinton, Hillary Rodham Clinton, and other individuals who are as yet unidentified, were principals in at least one, and possibly more, of the following companies and/or business interests, each of which maintained a checking account at Madison Guaranty Savings & Loan ("MGSL"):
>
> | | |
> |---|---|
> | Madison Marketing | Designers Construction |
> | McDougal & Associates | Madison Financial Corporation |
> | Flowerwood Farms, Inc. | Whitewater Development Corp, Inc. |
> | Pembrook Manor, Inc. | Rolling Manor, Inc. |
> | Great Southern Land Co. | Tucker-Smith-McDougal |

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[438] Id.

[439] Id. at 5.

[440] Id. at 2, 3, 18.

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Smith-Tucker-McDougal Smith-McDougal

> [From September 1984 through May 1985], some or all of the principals of the aforementioned companies allegedly allowed, or participated in, numerous questionable cash flow and "loan" transactions between the combined companies, and other financial institutions. The transactions . . . . allege excessive overdrafts resulting in unauthorized loans, check kiting, possible forgery (or at the very least, extensive use of unauthorized signatures), potential misappropriation of funds, possible illicit campaign contributions, diversion of loan proceeds, and potential bank fraud; each of these actions, compounded by the extended time frame during which they occurred, lends causation to the probability that some or all of the McDougal's business associates and partners, the collective principals of these combined companies, had knowledge of these activities. The extensive nature of these activities could allegedly constitute ongoing criminal and regulatory violations, which lasted for a period of three or more years, and could have ultimately contributed to the failure of the Association.[441]

The allegations of wrongdoing contained in the RTC's C-0004 criminal referral focused on three federal criminal statues: 1) conspiracy (18 U.S.C. § 371); 2) defalcation, embezzlement, or misuse of position (18 U.S.C. § 657); and 3) bank fraud (18 U.S.C. § 1344).[442]

b. Jim McDougal Unlawfully Moved Funds through Various Accounts, Including Whitewater's while Operating Madison Guaranty.

Whitewater's cash flow shortages consistently plagued the venture and required additional cash from the McDougals and Clintons.[443] Lot sales did not keep up with loan payments, development costs, and other expenses.[444] From 1980 to 1986, while Jim McDougal operated

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[441] Id. at 5. The RTC ultimately submitted ten referrals identifying additional suspected criminal activity by McDougal and others.

[442] Id. at 1.

[443] See Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation at 28-29 (Apr. 24, 1995).

[444] Id.

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Madison Guaranty and Madison Bank, he shuffled the Whitewater debt among loans at various institutions, payable to various entities and individuals.[445] McDougal used several methods to keep the loans current, including running overdrafts and shifting money among his various accounts at Madison Guaranty.[446] McDougal said that he took money from any available account he controlled to cover loan payments for other obligations among entities he controlled.[447] When one loan matured, McDougal would pay it off by borrowing money in a different name, which McDougal called "gathering the butter and egg money" due to his cannibalizing his various entities to meet his loan obligations.[448]

The Independent Counsel identified numerous instances of McDougal's use of corporate entities that he controlled to transfer funds to Whitewater Development while he controlled Madison Guaranty. These contributions and flow-through events are described in Appendix 5 to this Part.

The financial contributions made to Whitewater all directly corresponded with either scheduled Whitewater loan payments or were made to help clear overdrafts that Whitewater Development loan payments caused. The two flow-through events represent situations where McDougal engineered the transfer of funds to Whitewater Development to clear large overdrafts caused by expenditures unrelated to Whitewater. These transactions, if done with the requisite criminal intent, would be criminal violations of federal banking law. These transactions and

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[445] J. McDougal 9/96 Int. at 7-8.

[446] Id. at 7.

[447] Id.

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flow-through events are discussed in Appendix 5 to this Part.

c. Nominee Loans.

Jim McDougal participated in two nominee transactions, one on July 11, 1983 involving Chris Wade, and one on November 15, 1982 in the name of Bill Clinton. The Independent Counsel concluded that these transactions violated 18 U.S.C. § 657 (regarding defalcation, embezzlement, or misuse of position).

2. Chris Wade Committed Criminal Acts Selling Whitewater Estates Lot 7.

While Wade's personal bankruptcy action was pending in 1980, he purchased Whitewater Development's Lot 7 under the name of an acquaintance. That person, commonly known as a "straw purchaser," applied for a bank loan, pledging Lot 7 as security without disclosing that Wade was the real owner. Because these actions raised questions about whether Wade or others had committed the federal offenses of bank fraud, bankruptcy fraud, or tax fraud, the Independent Counsel sought and received specific referrals from the Special Division covering this matter, by orders dated December 19, 1994 and July 28, 1995.

The investigation revealed that on October 14, 1980, Whitewater Development sold Lot 7 to Wade for $33,250.[449] Wade bought the lot for $35,000 without commission.[450] Whitewater

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[448] J. McDougal 9/96 Int. at 7.

[449] Offer and Acceptance Between Ozark Realty Co. and Whitewater Development Corp. (Oct. 8, 1980) (Doc. No. 337-0000372); Warranty Deed Between Whitewater Development Co., Inc. and Chris V. Wade and Associates, Ozark Realty Co. (filed Oct. 14, 1980) (Doc. Nos. 337-00000379 through 80); see also Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation at 35 (Apr. 24, 1995).

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Development used $30,370 of the net cash paid by Wade to make a principal payment on Citizens Bank loan no. 5885.[451] The payment reduced the principal balance to $143,241.[452] After this payment, Whitewater Development received net proceeds of $2,349.95.

Citizens Bank released Lot 7 (along with Lot 13) to the McDougals and the Clintons on October 16, 1980.[453] On November 1, 1989, Wade and his wife filed for bankruptcy under Chapter 11 of the Bankruptcy Code seeking reorganization.[454] Wade had verified under penalty of perjury that he had outstanding debts to unsecured creditors of approximately $489,000, and assets of just over approximately $371,000.[455]

While Wade's bankruptcy was pending, he repurchased Lot 7 from a person living in Texas.[456] Wade purchased Lot 7 by transferring 120 acres of property that Wade owned in northern Arkansas to the Lot 7 owner.[457] Wade concealed the transaction by having title to Lot 7

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[450] Wade 4/28/95 Int. at 3-4.

[451] See Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation at 35 (Apr. 24, 1995).

[452] Id.

[453] Lot 13 was released to the McDougals and the Clintons, even though the Madison Bank loan to Mrs. Clinton was not executed until December 1980.

[454] Senate Whitewater Comm. Hearing, supra note 147, at 150-51 (May 8, 1996) (testimony of J. Patterson).

[455] Petition, In re: Christopher V. Wade and Rosalee Wade, (United States v. Wade), No. 89-13144 (E.D.Ark. Nov. 14, 1990).

[456] Wade 4/7/94 Int. at 6.

[457] Id.

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placed in someone else's name.[458] In June 1991, Wade caused the other person to apply for a $45,000 loan from Citizens Bank of Lavaca.[459] The loan application was fraudulent because the application asserted the loan was for the benefit of Wade's surrogate, and he and Wade intended this loan for his (Wade's) own benefit, which occurred when he used it to build his home on Lot 7.[460] In September 1991, Wade again helped the straw purchaser obtain a loan from the Lavaca Bank, concealing his own connection and used the $15,015 received to pay for more work on his house.[461]

On March 7, 1995, Wade agreed to plead guilty to one felony count of bankruptcy fraud and one felony count of false application and certification to a financial institution. He also agreed to cooperate with the Office's ongoing investigation. On December 1, 1995, Judge Susan Webber Wright sentenced Wade to fifteen months imprisonment followed by three years supervised release, and a $3,000 fine.[462]

IV. ANALYSIS

The investigation uncovered evidence of criminal conduct concerning four potential groups of criminal charges: 1) allegations that Governor Clinton knew of, and approved of, CMS's fraudulent $300,000 loan to Susan McDougal; 2) allegations that President Clinton committed perjury in denying that he had ever taken out a loan from Madison Guaranty; 3)

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[458] Id. at 7.

[459] Id. at 7-8.

[460] Wade 4/7/94 Int. at 7-8.

[461] Lauramoore 3/1/94 Int. at 3.

[462] Judgment, United States v. Wade, No. LR-CR-95-48-001 (E.D.Ark. Dec. 4, 1995).

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allegations that Governor Clinton knew about the Lorance Heights transaction; or, 4) allegations that Jim McDougal engaged in criminal conduct during the course of various financial transactions concerning Whitewater Development and Madison Guaranty.

A. Governor Clinton's Knowledge and Approval of CMS's $300,000 Loan to Mrs. McDougal.

David Hale and Jim McDougal each testified that Governor Clinton knew about and approved of their decision to have CMS make a loan to Mrs. McDougal. Both said that Governor Clinton participated in a meeting with them at Castle Grande -- McDougal's real estate development -- during which they discussed the CMS loan. Documentary records relating to Governor Clinton's movements partially corroborated aspects of this testimony. President Clinton denied, under oath, the veracity of the Hale/McDougal allegations.

The testimony of both Hale and McDougal was also subject to substantial impeachment. Both witnesses were convicted felons who testified pursuant to cooperation agreements with the United States, from which they expected to benefit. McDougal had also previously given sworn testimony contrary to his later sworn declarations about Governor Clinton's participation in the Castle Grande meeting. Mr. McDougal is now deceased. Mrs. McDougal, who could reasonably be expected to have additional information relating to Governor Clinton's knowledge and participation in this transaction (if any), has engaged in contumacious conduct and refused to provide evidence to this Office's investigation.

The Independent Counsel concluded that this evidence was insufficient to warrant prosecution of President Clinton because the evidence did not establish Governor Clinton's

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knowing participation in a criminal scheme.[463]

B. President Clinton's Knowledge of the $27,600 Loan, Taken Out in His Name at Madison Guaranty, and Whitewater's Acquisition of Lorance Heights.

At the trial of Governor Tucker and the McDougals, President Clinton testified that he had never taken out a loan from Madison Guaranty and did not know about Whitewater Development's purchase of Lorance Heights. Following his conviction, Jim McDougal agreed to cooperate with the Independent Counsel. As part of that cooperation, McDougal provided the Office with information about both transactions.

McDougal directed the Office to a loan taken out in the name of "Bill Clinton" at Madison Guaranty in 1982. According to McDougal, he discussed this loan with Governor Clinton. Other than McDougal's testimony, however, no other testimonial or documentary evidence existed to corroborate McDougal's allegation that Governor Clinton had personal knowledge of the $27,600 Madison Guaranty loan. Neither the microfilm records nor the original check contain evidence of then-Governor Clinton's receipt and/or endorsement of the loan check. In light of the absence of corroboration, the Independent Counsel concluded that the admissible evidence would probably be insufficient to obtain and sustain a conviction of President Clinton concerning this allegation.

McDougal also provided the Independent Counsel with information about President Clinton's alleged knowledge of Whitewater Development's acquisition of the Lorance Heights parcel. No additional evidence, however, corroborated these allegations. In light of the absence

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[463] United States Attorneys' Manual, Title 9 § 9-27.230.

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of corroboration, the Independent Counsel, again, concluded that the admissible evidence would probably be insufficient to obtain and sustain a conviction of President Clinton concerning this allegation.[464]

C. Jim McDougal's Financial Transactions.

As set forth more fully above, the Independent Counsel uncovered substantial evidence that Jim McDougal engaged in numerous and varied financial transactions involving Madison Guaranty and Whitewater Development. Collectively, Jim McDougal intended these transactions to confer substantial financial benefit on Whitewater Development. These beneficial transactions were knowingly undertaken in derogation of various federal and state banking regulations. Accordingly, the Independent Counsel concluded that there was sufficient evidence to prove beyond a reasonable doubt that McDougal had engaged in fraudulent conduct in violation of federal banking laws and other provisions of federal criminal law.

In an exercise of prosecutorial discretion, the Independent Counsel determined not to present these charges to the grand jury for indictment. In the judgment of the Independent Counsel, the criminal charges brought against McDougal concerning the $300,000 CMS loan to Mrs. McDougal represented the most serious readily provable criminal charges. After his conviction on those charges, McDougal entered into a cooperation agreement with the United States. Accordingly, additional prosecution of McDougal on criminal charges relating to

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[464] The Independent Counsel reached these conclusions (and the conclusion concerning the $300,000 loan) before the death of McDougal. In light of those conclusions the Independent Counsel also determined, in December 1997, that there was no "substantial and credible information" warranting referral of these allegations to Congress for consideration of

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Whitewater Development served no substantial federal interest. For this reason, the Independent Counsel chose not to prosecute McDougal for financial offenses relating to Whitewater Development. McDougal satisfactorily cooperated with the Independent Counsel's investigation until his death in March 1998.

V. SUMMARY CONCLUSION

The Clintons' investment in Whitewater was financially unsuccessful. They invested a substantial amount of personal funds and realized no profit from the venture. In the main, they permitted Jim McDougal to manage the investment, and McDougal failed in making the venture profitable.

Indeed, the Whitewater investment was so unsuccessful that McDougal was obliged to engage in a series of fraudulent transactions to keep the venture afloat. The evidence is unequivocal that, concerning almost all of the fraudulent transactions, the Clintons were unaware of McDougal's criminal conduct. Although they indirectly benefited from these actions (inasmuch as they forestalled any foreclosure on the property) there is, save in two instances, no substantial evidence that they participated in or knew of McDougal's acts. And in those two instances (relating to Governor Clinton's knowledge of the $300,000 CMS loan and the $27,600 loan), while evidence does exist to indicate Governor Clinton's knowing participation, that evidence was, ultimately, of insufficient weight and insufficiently corroborated, to obtain and sustain a criminal prosecution beyond a reasonable doubt.

Accordingly, this matter is now closed.

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impeachment under 28 U.S.C. § 595(c).

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PART B

THE RELATIONSHIP OF MADISON GUARANTY, CMS, JIM McDOUGAL, THE ROSE LAW FIRM, HILLARY RODHAM CLINTON AND WILLIAM J. CLINTON

Chapter 1:

The Final Fifteen Months of Jim McDougal's Involvement at Madison Guaranty (1985 to Summer 1986)

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I. INTRODUCTION

This Chapter details evidence about the relationship between three individuals (Jim McDougal, Hillary Rodham Clinton, and William J. Clinton) and four entities (Capital Management Services, Whitewater Development Company, the Rose Law Firm, and Madison Guaranty Savings & Loan) in 1985 and 1986.

First, both Jim McDougal and Mrs. Clinton had a direct relationship with Madison Guaranty. McDougal, the thrift's owner and operator, hired the Rose Law Firm ("Rose") where Mrs. Clinton was a partner. Mrs. Clinton performed legal services for Madison Guaranty including work before various state agencies operating under Governor Clinton.

Second, McDougal, Mrs. Clinton, Madison Guaranty, and Rose were all connected to a real estate development called Castle Grande. McDougal purchased the land and buildings from Industrial Development Corporation ("IDC") by using the resources of Madison Guaranty and its subsidiary, Madison Financial Corporation. To evade regulatory limitations on the amount Madison Guaranty could invest in real estate transactions of its service corporation, McDougal arranged for some of the land and a sewer and water utility located thereon to be purchased by Seth Ward, Rose partner Webster Hubbell's father-in-law and a Madison Financial employee. Hubbell, Mrs. Clinton, and Rose provided legal services related to Madison Financial's purchase and development of the property, including conferences with "straw purchaser" Seth Ward. Portions of Castle Grande were sold to insiders (including Jim Guy Tucker) at fraudulently inflated prices so that Madison Financial could book a "profit."

The Castle Grande transactions were scrutinized by federal thrift examiners, who

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concluded that the transactions rendered Madison Guaranty insolvent. To conceal Ward's compensation from the Castle Grande transaction, Ward and Madison Guaranty insiders created fraudulent loan documents and an option agreement that deceived regulators. Mrs. Clinton performed legal services for Madison Guaranty and Ward to create these deceptive documents, though the evidence is insufficient to prove she knew the fraudulent nature or purpose of the documents.

Third, McDougal and Madison Guaranty had a substantial relationship with David Hale, who owned CMS, a federally licensed and regulated small business investment company that was supposed to loan money to disadvantaged small businesses. Between 1985 and 1986, McDougal, Hale, and others (including Mrs. McDougal and former Arkansas Governor Jim Guy Tucker) engaged in a financially complex fraud scheme. The scheme's central focus, described more fully in Volume I, Appendix 5, was a fraudulent loan from Madison Guaranty to a straw purchaser named Dean Paul. Paul used this loan to purchase property from Hale at inflated prices, allowing Hale to book a "profit," which Hale shifted to CMS so he could get three dollars in federal funds for every dollar he had invested in CMS.

Hale and CMS made four fraudulent loans to people or businesses designated by McDougal, including Larry Kuca, Steve Smith, Susan McDougal, and a corporation controlled by Jim Guy Tucker. Tucker's corporation used his CMS money for a down payment on the sewer and water system at McDougal's Castle Grande development. As detailed in Volume II, Part A of this Report, the proceeds from some of the CMS loan to Susan McDougal were used to make payments that benefited the Whitewater Development Company, then jointly owned by the

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Clintons and McDougals. Some evidence suggests Governor Clinton knew about the CMS loan to Mrs. McDougal and its intended use to benefit Whitewater, but that evidence was insufficient to prove Governor Clinton's knowing participation in a fraudulent scheme. As set forth in this Chapter, some evidence also suggests that Mrs. Clinton did legal work that may have been related to Castle Sewer and Water's purchase of the utilities from Ward and Madison Financial.

This Chapter focuses exclusively on evidence of events during 1985 and 1986. A detailed explanation of these historical events serves two functions:

- James McDougal ran Madison Guaranty (and its subsidiary, Madison Financial) in a corrupt and fraudulent fashion that involved numerous significant federal criminal offenses. The Independent Counsel's investigation established that fact, and determined that insufficient evidence existed to prove beyond a reasonable doubt that either Governor Clinton or Mrs. Clinton knowingly participated in that criminal conduct in 1985 and 1986.

- Fraudulent activity conducted at Madison Guaranty quickly came under scrutiny by federal regulators and federal investigators. When it became apparent that McDougal's activities had caused the thrift's failure, many individuals associated with the thrift took steps to conceal or minimize their connection.

II. FINDINGS AND ANALYSIS

The Independent Counsel reports the following findings and conclusions:

About Rose's initial representation of Madison Guaranty:

- Madison Guaranty's principal law firm was Mitchell, Williams, Selig, Jackson & Tucker.

- Rose first did work for McDougal when it represented the Bank of Kingston/Madison Bank in the early 1980s. Rose's bill for an appeal remained unpaid for over two years.

- In October 1984, Madison Bank & Trust paid Rose's outstanding bill.

- From 1985 to 1986, Rose performed legal services for Madison Guaranty on regulatory matters before the Arkansas Securities Department. These included:

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- Seeking authorization to issue preferred stock; and

- Seeking to open a limited partnership/broker-dealer.

- Madison Guaranty wanted to issue preferred stock to increase its net worth and satisfy regulators about the institution's financial status.

- Mrs. Clinton was the Rose billing partner on Madison Guaranty matters. She performed work on the matters involving the ASD, and her name appeared in some of the correspondence between Rose and the agency.

About the Castle Grande real estate transaction:

- Seth Ward and Jim McDougal engaged in a fraud designed to purchase property from IDC while evading regulatory limitations.

- Ward acted as a straw purchaser of some of the IDC property. Although the title was in Ward's name and there was a loan taken out in Ward's name, he had no other indicia of ownership: Ward was not personally liable to pay the loan. His compensation for his role in the purchase was to be paid certain "commissions" on future sales of the property -- whether he had a hand in the sales or not -- rather than being compensated for the capital gains on the land.

- Webb Hubbell did legal work for Ward on Ward's purchase and subsequent disposition of the Castle Grande property.

- Between the date the property was purchased (October 4, 1985) and sold (February 28, 1986), Mrs. Clinton billed Madison Guaranty for fourteen conferences with Seth Ward.

- Portions of the property were resold to insiders -- Jim Guy Tucker, Larry Kuca, and Davis Fitzhugh -- at inflated prices. The purchases were financed primarily by loans from Madison Guaranty.

- Rose also performed legal work related to proposed uses of Castle Grande requiring approval from state agencies:

    - An examination of whether a brewery could be constructed at the property, which involved the Arkansas Alcohol Beverage Commission; and

    - An examination of whether the utility on the property could sell services outside of Castle Grande, which involved the Arkansas Public Service

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Commission, the Arkansas Pollution Control Board, and the Arkansas Board of Health.

- In early March 1986, Madison Guaranty was subject to an extensive examination by federal examiners from the Federal Home Loan Bank Board, which oversaw thrifts.

- To conceal the compensation Ward was paid for his role as straw man, Madison Guaranty created fictitious records of two "cross loans."

- When federal examiners questioned the propriety and relationship of the two cross loans, Madison Guaranty falsely told examiners the two cross loans were unrelated.

- To conceal the relationship between the two cross loans, Ward and Madison Guaranty used an option agreement. Mrs. Clinton was involved in drafting the option agreement for Madison Guaranty and Ward.

- The evidence is insufficient to prove beyond a reasonable doubt that Mrs. Clinton knew Madison Guaranty and Seth Ward intended to use the option agreement to deceive regulators.

About Jim McDougal's relationship with Hale's Capital Management Services and related transactions as detailed in this Chapter; Volume I, Appendix 5, and Volume II, Part A of this Report:

- Jim McDougal, Jim Guy Tucker, and David Hale, engaged in a fraudulent plan to induce the Small Business Administration to provide additional federal funds to Capital Management Services for their own benefit.

- Part of the plan involved Madison Guaranty loaning money to a straw purchaser, Dean Paul. Paul purchased three parcels of property from David Hale at prices created with falsely inflated appraisals. Hale used profits from these fraudulent sales to provide money to CMS. CMS's increase in capital was matched three-for-one with federal funds by the Small Business Administration.

- CMS made fraudulent loans to Tucker's corporation, Mrs. McDougal, Stephen Smith, and Larry Kuca. These loans were not used for purposes specified in loan application documents.

- Mrs. Clinton did legal work for Seth Ward that appears to be connected to the utilities which were the subject of loans to Tucker's corporation.

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- Some of Mrs. McDougal's loan proceeds went to pay Whitewater Development Company obligations; the McDougals and Clintons were equal owners of Whitewater Development.

- There was some evidence that Governor Clinton may have known about the loan to Mrs. McDougal, but there was insufficient evidence to prove beyond a reasonable doubt that Governor Clinton knew the loan was illegally obtained.

The Independent Counsel's findings resolve several previously disputed questions of historical fact. Four aspects of these findings and conclusions warrant brief elaboration here. The topics addressed include: 1) the retention of the Rose Law Firm by Madison Guaranty, and an old bill for the prior representation by Rose for McDougal Madison Bank and Trust; 2) Seth Ward's role as a straw purchaser of the Castle Grande; 3) Mrs. Clinton's role in drafting an option agreement in the Castle Grande transaction; and 4) the option agreement's deceptive effect on the federal bank examination of Madison Guaranty.

A. Madison Bank and Trust Bill.

The Office's investigation was able to establish that when Madison Guaranty retained Rose in April 1985, Madison Bank & Trust did not have an unpaid bill for Rose's services from the early 1980s. That Madison Bank & Trust bill was paid in October 1984. This conclusion is significant because Mrs. Clinton testified that the retention of the Rose Firm by Madison Guaranty began in April 1985 when she met with Jim McDougal to demand payment of this (already paid) bill.

The Rose bill for services to Madison Bank & Trust on July 30, 1982, amounted to $5,000 in legal fees, and $893.63 in costs and expenses. Documentary evidence showed that in July 1982, when Rose's work for Madison Bank & Trust was complete, McDougal was unhappy

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with the result and told his staff not to pay the bill. Documentary evidence also showed that in October 1983, Mrs. Clinton unsuccessfully tried to collect payment on this bill from McDougal.

Documentary evidence also established that in September 1984, Madison Bank & Trust board authorized the Bank's president to negotiate settlement of the disputed bill with Rose. Rose engaged in a discussion with Madison Bank & Trust, hoping to obtain payment, memorialized in correspondence between Vince Foster and the Bank. On October 22, 1984, the Bank paid Rose $5,000. The next day, Rose stamped the Bank of Kingston bill "paid" and credited attorneys who had worked on the matter with their portion of the collected fees, which were adjusted to reflect that Rose had "written off" the costs. The Bank considered the matter settled; Rose never made any effort to collect the written off $893.63.

B. Castle Grande.

Three aspects of the fraudulent Castle Grande transaction warrant elaboration: Seth Ward's role; Mrs. Clinton's role drafting the option agreement; and the deceptive effect the option agreement had on federal bank examiners.

Seth Ward and Castle Grande -- Evidence established that Seth Ward was the straw purchaser of some of the IDC property, later known as Castle Grande. Ward enabled McDougal and Madison Financial to buy the land by circumventing the regulatory six percent limit on investments that a thrift could make in its subsidiary. The six percent limit restricted what Madison Guaranty could lend Madison Financial; it did not limit what Madison Guaranty could lend to a private party such as Ward.

Ward wanted assurance that he had no personal financial risk for acting as nominee.

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McDougal agreed Madison Guaranty would lend Ward the entire amount of the purchase price on a nonrecourse basis. Madison Guaranty would rely only on the value of the property itself for repayment if Ward failed to repay the loan. In return, Ward agreed to grant Madison Financial an option for at least 270 days to purchase any part of the property from him at a price equal to the nonrecourse loan plus all accrued interest. Madison Financial could purchase portions of Ward's property as needed, and sell them to third parties. Ward received "commissions" on subsequent sales of the property to third parties -- even when he had nothing to do with arranging sales. Ward served as a "warehouse" for the property, and never put in any of his own money.

When Ward and his accountant, Mike Schaufele, met with McDougal in late August 1985, Ward specifically sought reassurance about the tax implications of the transaction. Madison Financial agreed to reimburse Seth Ward for any additional taxes he owed by virtue of his holding the property. Madison Financial also agreed to handle all administrative duties associated with the property, such as collecting rents and sewer and water fees.

Ward received significant compensation with no risk or responsibility, making clear Ward was Madison Financial's straw purchaser using Madison Guaranty's money. Ward did nothing to earn his "commissions," and had none of the traditional indicia of property ownership, like the burden of paying taxes and collecting rents. Moreover, Ward's only source of compensation was his "commission," having relinquished any rights to appreciation in the property's value.

Mrs. Clinton and the Option Agreement -- Mrs. Clinton testified that she did not remember doing any legal work on the May 1, 1986 option agreement, nor did she think she

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drafted it "from scratch." Evidence showed that Mrs. Clinton helped draft the option agreement. Mrs. Clinton billed Madison Guaranty for her work, and there was no evidence that this bill was in error. The option agreement bore Mrs. Clinton's unique Rose computer code, designed by Rose to identify the attorney who drafted a particular document. Finally, Mrs. Clinton once had a file labeled "Ward Option," which she had destroyed in July 1988, along with her other Madison Guaranty files.

The Regulators and the Option Agreement -- Federal examiners said the existence of the option hindered their investigation of Madison Guaranty. Although the examiners were suspicious of the cross loans and option, the existence of the option provided documentary support for Madison Guaranty's claim that two unfunded April 7, 1986 cross loans were intended to document Madison Financial's intention to purchase Holman Acres from Ward, and were not related to the original September 24, 1985 Castle Grande land purchase agreement.

The option successfully deceived the examiners. Ward was paid over $380,000 for his role as straw man in the IDC transaction at the same time examiners were attempting to shed light on such fraudulent transactions. The option concealed the true nature of Ward's payments from examiners, who accepted Madison Guaranty's claim that the loans to Ward were unrelated to his commissions.

III. FACTUAL SUMMARY

This section summarizes evidence found by the Independent Counsel's investigation about the final fifteen months of the Madison Guaranty operation. It discusses evidence about:

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- Madison Guaranty's retention of Mrs. Clinton and Rose, and work Rose did for Madison Guaranty in front of Arkansas state agencies under her husband's authority;

- transactions involving the Castle Grande development, including a summary of legal work done by Rose and Mrs. Clinton;

- the examination of Madison Guaranty conducted by federal regulators and efforts of the Madison Guaranty insiders to conceal their misconduct; and

The section also briefly discusses relevant aspects of the evidence relating to an $825,000 loan made by Madison Guaranty to Dean Paul so that Paul could buy property at falsely inflated prices from David Hale, which Hale used to get more federal funds for CMS. CMS made fraudulent loans to Jim Guy Tucker's corporation, Susan McDougal, Larry Kuca, and Steve Smith. Mrs. McDougal's CMS loan was used to benefit Whitewater Development Company and its partners, the McDougals and Governor and Mrs. Clinton.[465]

A. The Rose Law Firm's Representation of a McDougal-Controlled Financial Institution before 1985.

Beginning in 1992, Madison Guaranty's retention of Rose, where Mrs. Clinton was a partner, and Rose's work for the savings and loan, received considerable attention. Public reports disclosed that Governor and Mrs. Clinton had a business relationship with Jim McDougal, owner of the failed savings and loan, and that Mrs. Clinton and Rose had represented the thrift during its most troubled period. McDougal publicly stated that Governor Clinton had asked him to hire

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[465] Much of the information relating to the $825,000 loan to Dean Paul and the subsequent fraudulent loans to Kuca and Smith are detailed in Vol. I, Appendix 5. The subsequent fraudulent $300,000 loan to Susan McDougal (d/b/a Master Marketing) and the use of the proceeds of that loan to benefit the Whitewater Corporation are detailed in Vol. II, Part A of this Report. This Chapter details the evidence relating to the subsequent fraudulent loan to Castle Sewer and Water, a corporation controlled by Jim Guy Tucker.

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Mrs. Clinton. Journalists and then federal investigators questioned President and Mrs. Clinton about Rose's Madison Guaranty representation.

Numerous conflicting stories were told by those involved about how Madison Guaranty came to hire Rose. While Jim McDougal claimed that Madison Guaranty hired Rose because Governor Clinton asked him to hire his wife, Mrs. Clinton said Governor Clinton had nothing to do with it. Mrs. Clinton further said Madison Guaranty hired Rose because a young associate at Rose knew the president of Madison Guaranty, John Latham, and asked Latham to hire them. Mrs. Clinton's statements on this subject are addressed in Part B, Chapter 3 of this Report. This section addresses only known facts about the retention and the early work Rose did for Madison Guaranty.

1. Rose Represented the McDougals' Bank of Kingston (Madison Bank & Trust) in a Regulatory Matter and Litigation.

Rose's first representation of a McDougal-controlled financial institution began in April 1981, when Rose represented the Bank of Kingston in its effort to move its principal office to a different town in Arkansas.[466] Jim McDougal hired Charles Joseph "Joe" Giroir Jr., then chief operating officer of Rose.[467] Mrs. Clinton apparently had nothing to do with Rose's hiring and,

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[466] Letter from E.J. Ball, Ball & Mourton attorney, to Don Denton, Senior Vice-President, Madison Guaranty (Oct. 20, 1980) (Doc. Nos. 1171-00000376 through 380). Jim and Susan McDougal purchased a controlling interest in the Bank of Kingston in October 1980. Other investors included Steve Smith, Julie Baldridge (Smith's wife), and Jim Guy Tucker. Statement from Ball & Mourton to Bank of Kingston and James B. McDougal (Oct. 20, 1980) (Doc. No. GG-00000065).

[467] J. McDougal 8/96-6/97 Int. at 8; J. McDougal 4/2/97 GJ at 76; see also Giroir 7/18/96 GJ at 18 ("I think [the business] came because of my reputation . . . in the commercial banking

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although she was allocated a small portion of the fee for Rose's handling of the matter, she did no substantive work on the case.[468]

Rose initially represented the bank in petitioning the Arkansas Bank Department to move the bank's principal office to Huntsville, Arkansas. The prior owners of the Bank of Kingston also owned the nearby First National Bank of Huntsville. When they sold their stock to the McDougals and the others, the contract contained a clause prohibiting a move to that location. First National Bank of Huntsville learned of the Bank of Kingston's proposal, and sued to enforce the non-competition clause.[469]

The litigation was handled primarily by Vincent W. Foster Jr., a partner in Rose's litigation section.[470] The Chancery Court ruled against Bank of Kingston on November 6, 1981, and prohibited the move.[471] Foster prepared a letter to the bank's board "provid[ing] an estimate of the cost of an appeal, and provid[ing] a recommendation concerning an appeal."[472] Madison

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area").

[468] See Rose Billing Records (Dec. 21, 1981) (Doc. No. DEK014941) (Mrs. Clinton was allocated $21.25 on fees of more than $13,000 billed in December 1981).

[469] Complaint, First Nat'l Bank of Huntsville v. Bank of Kingston, (Ch. Ct, of Madison County, Ark Aug. 4, 1981) (Doc. Nos. 1171-00000316 through 319).

[470] Rose allocations show that Foster was allocated fees of $8,436 of the total fee amount of $13,060.50 before the appeal. Rose Billing Records (Dec. 21, 1981) (Doc. No. DEK014941).

[471] Findings of Fact, Conclusions of Law and Order of the Court, First Nat'l Bank of Huntsville v. Bank of Kingston, No. E-81-112 (Ch. Ct., Madison County, Ark.) (Doc. Nos. GG-00000156 through 161).

[472] Letter from Vincent Foster, Rose Attorney, to Mr. and Mrs. James B. McDougal, stockholders of Madison Bank & Trust, Steve Smith, stockholder of Madison Bank & Trust, Austin Smith, board member of Madison Bank & Trust and Steve Smith's father, Gary Easterling, board member of Madison Bank & Trust, Jim Guy Tucker, board member and

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Bank & Trust (Bank of Kingston's new name) decided to appeal at a fixed rate of $5,000 plus costs.[473] The appeal was unsuccessful.[474] Rose's fees totaled the agreed $5,000 plus $893.63 in expenses, and on July 30, 1982, Giroir mailed McDougal a bill.[475] McDougal wrote on the outside of the envelope: "Carla: DO NOT PAY. KEEP IN FILE. Jim."[476]

Rose's July 1982 bill remained unpaid for more than two years. McDougal said he refused to pay the bill because he was "vastly overcharged"[477] because Rose billed him for a senior attorney like Foster, but sent a junior attorney to argue the appeal.[478] In the fall of 1983, Mrs. Clinton contacted McDougal to try to get the bill paid.[479] Giroir later said he may have

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attorney at Mitchell Williams and James Vaughn, board member of Madison Bank & Trust, at 1 (Nov. 16, 1981) (Doc. Nos. GG-00000146 through 148).

[473] See Letter from Vincent Foster, Rose attorney, to Gary Bunch, President, Madison Guaranty (cc: James McDougal, Senior Vice-President, Madison Guaranty, Joe Giroir, Rose attorney) (Oct. 9, 1984) (stating that $5,000 fee limit was agreement between Jim McDougal and Joe Giroir).

[474] Madison Bank & Trust v. First Nat'l Bank of Huntsville, 276 Ark. 405, 635 S.W.2d 268 (1982).

[475] Letter from C.J. Giroir Jr., Rose attorney, to James B. McDougal, Chairman of the Board for the Bank of Kingston (July 30, 1982).

[476] Letter from C.J. Giroir Jr., Rose attorney, to James B. McDougal, Chairman of the Board for the Bank of Kingston with attached envelope (July 30, 1982) (uppercase in original).

[477] J. McDougal 4/2/97 GJ at 77-78, 105-06.

[478] J. McDougal 8/96-6/97 Int. at 8; J. McDougal 4/2/97 GJ at 77; 114. Board Minutes from Madison Bank & Trust corroborate some discussion about a "new lawyer" who was assigned to the appeal. Madison Bank & Trust Board Minutes at 2 (Sept. 25, 1984); see also Letter from Vincent Foster, partner of Rose, to Gary Bunch, President, Madison Guaranty, (cc: James McDougal, Senior Vice President, Madison Guaranty, Joe Giroir, Rose Attorney) (Oct. 9, 1984).

[479] See Letter from C.J. Giroir, Rose Attorney, to James B. McDougal, Chairman of the Board for Bank of Kingston (Oct. 10, 1983) (Doc. No. 56-00064693) ("Pursuant to your discussion with Hillary Rodham Clinton, I am enclosing herewith a copy of our firm statement,

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asked Mrs. Clinton to intercede because she knew Jim McDougal and Steve Smith.[480] After Mrs. Clinton's conversation with McDougal, Giroir sent another copy of the July 1982 bill on October 10, 1983.[481] The bank did not pay.

The Madison Bank Board Minutes for September 25, 1984, reflected that the board concluded that Gary Bunch, the bank's president, "will negotiate settlement" with Rose about the bill.[482] Bunch later testified that McDougal had asked him to settle the outstanding bill with Rose.[483]

Bunch negotiated settlement with Vince Foster, who wrote Bunch on October 9, 1984, threatening to sue unless the bill was paid by October 22, 1984:

> In accordance with our telephone conversation last week, I am enclosing another copy of the statement for our services rendered in connection with the appeal of

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dated December 23, 1981. . . "). The statement was actually dated July 30, 1982. McDougal was shown a copy of Giroir's letter and did not remember speaking to Mrs. Clinton about the outstanding bill. J. McDougal 8/96-6/97 Int. at 12. Notes of John Podesta (May 18, 1994) (Doc. No. 2139-00000158) (Mrs. Clinton had "some recollection" of talking to Giroir: "This is a 10-year letter. She has some recollection of Giroir talking to her about the unpaid bill and may have talked to McDougal about it").

[480] Giroir 7/18/96 GJ at 21-22. Both Jim McDougal and Smith had served under Governor Clinton in his first administration in 1979-1980. Tr. at 4806, United States v. McDougal, Tucker, and McDougal, No. LR-CR-95-173 (E.D. Ark.) (testimony of S. Smith); Tr. at 6970, United States v. McDougal, Tucker, and McDougal, No. LR-CR-95-173 (E.D. Ark.) (testimony of J. McDougal).

[481] Letter from C.J. Giroir, Rose attorney, to James B. McDougal, Chairman of the Board for the Bank of Kingston (Oct. 10, 1983) (Doc. No. 56-00064693).

[482] Minutes of the Madison Bank & Trust Board Meeting at 2 (Sept. 25, 1984) (GJ Exh. 1634).

[483] Senate Whitewater Comm. Hearing, supra note 147, at 17 (May 16, 1996) (testimony of G. Bunch); Bunch 1/20/98 GJ at 29-30. Bunch initially said he could not remember why payment of the old bill had come up in the fall of 1984. Bunch 2/28/96 GJ at 27.

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the referenced litigation. As I mentioned to you the $5,000.00 fee limitation was established by agreement between Joe Giroir and Jim McDougal before we began work on the appeal. The agreement turned out to be to the benefit of the Bank since our actual time spent exceeded the amount charged.

You mentioned something about a "girl" lawyer doing the work on appeal. I was assisted on the appeal briefs and abstracting of the record by Carol Arnold, then a 40-year-old trial lawyer, who had already done some of the basic legal research for trial. According to our records approximately 75% of the attorney time on the appeal was spent by me.

We are totally baffled by the continued delay in the payment of this statement, but are willing to allow you an extension until October 22 in which to satisfy this statement. Otherwise, I am directed by the Firm to file suit.[484]

On October 22, 1984, Madison Bank & Trust paid the bill by a check to Rose for $5,000 for "Legal Fee."[485] Rose credited attorneys who worked on the appeal with earning fees of $4,106.37, which equates to the $5,000 Madison Bank & Trust paid minus expenses Rose incurred, totaling $893.63.[486] Allocating the earning of fees, less the expenses, indicates that Rose wrote off the lost expenses against the lawyers who earned the fees. After all relevant documents were located, Bunch testified that the $5,000 payment was a final settlement of the

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[484] Letter from Vincent Foster, partner of Rose to Gary Bunch, President of Madison Guaranty (cc: James McDougal, Joe Giroir) (Oct. 9, 1984).

[485] Records from Madison Bank show that on October 23, 1984, a debit of $5,000 was made from its general ledger for legal fees. Debit General Ledger for Account No. 16011, Legal Fees Account for $5,000 (Oct. 23, 1984) (Doc. No. MGSL-FR-00000009). A Rose invoice confirmed a credit of $5,000 on Madison Bank & Trust's account one day later on October 24, 1984 (July 30, 1982) (Doc. No. 1180-00000249). Letter from Alden Atkins, Vinson & Elkins attorney, to W. Hickman Ewing Jr., Deputy Independent Counsel (Apr. 17, 1996) ("[Records from Worthen Bank] show that Rose deposited a check for $5,000 on October 24, 1984. We are told by the bank's representatives that the identification number for that check shows that it was written on an account at Madison Bank & Trust in Kingston, Arkansas").

[486] Letter from Ronald M. Clark, Rose attorney, to Amy St. Eve, Associate Independent

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bill, and that Rose made no further efforts to collect any balance.[487]

In July 1997, a set of Rose's Madison Guaranty billing records from 1985-87 were found in a briefcase in the attic of Vince Foster's home.[488] The briefcase also contained two documents bearing on the payment of the Bank of Kingston bill. The first document was a copy of Rose's bill to the Bank of Kingston dated July 30, 1982. The copy found in Foster's briefcase was marked "paid" on October 23, 1984.[489] The second document found in the briefcase was a five-page chronology of Rose's representation of Madison Guaranty.[490] The chronology included the following:

07/30/82	Final bill of Rose Law Firm to Bank of Kingston (a/k/a Madison Bank & Trust) of $5,000 fees and $893 in costs (contains note in Giroir's hand: "Have Hillary bill with letter to McDougal -- will pay.")

Counsel (May 31, 1995).

[487] Bunch 1/20/98 GJ at 30.

[488] See Evidence Report OIC-35063-1B-1212 (Aug. 1, 1997) (showed property acquired July 31, 1997); Rose Billing Records produced from Vince Foster's attic (run off date Feb. 12, 1992) (Doc. Nos. 1180-00000250 through 364); L. Foster 8/12/97 Int. at 1-2 (Vince Foster's daughter discussing how she found the documents in her family's attic on July 23, 1997).

[489] Rose bill to the Bank of Kingston (July 30, 1982) (Doc. No. 1180-00000249).

[490] Foster Chronology of the Rose Law Firm Representation of Madison Guaranty Savings & Loan (Mar. 26, 1992) (Doc. Nos. 1180-00000236 through 240). Ronald Clark, Chief Operating Officer of Rose, said the document originated on Foster's computer at Rose, with a print date of March 26, 1992. Clark 12/2/97 GJ at 135-37. Clark identified the numbers that appear on the second page, "RLL1860.WP5" as a document number under the firm's computer system. With knowledge of these identification numbers Clark was able to call up the document on the system and determine that secretary Lorraine Cline created the document for Foster. Clark 12/2/97 at 136. The numbers on the second page, 3-26-92, reflect the date the document was printed, and change every time it is printed. Clark was able to de-archive the document and print it off the system. His printed version had a date of 12-01-97. Id. at 135-37.

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1983 Bank of Kingston final bill written off

10/23/84 $5,000 paid on Bank of Kingston bill[491]

Rose made no additional attempts to collect on the bill.[492]

2. Madison Guaranty Was Principally Represented by the Mitchell Williams Firm.

In 1982, the McDougals and five other partners purchased Woodruff County Savings and Loan Association.[493] Woodruff Guaranty was soon renamed Madison Guaranty Savings & Loan. Madison Guaranty's primary counsel and "lead firm" was Mitchell, Williams, Selig, Jackson & Tucker ("Mitchell Williams").[494] McDougal hired Mitchell Williams because of his relationship with Jim Guy Tucker, who had been a friend and business partner of his for years.[495]

Madison Guaranty relied almost exclusively on Mitchell Williams for legal advice. The firm provided a wide range of legal services, including regulatory work before the Arkansas Securities Department, Arkansas Bank Department, Federal Home Loan Bank Board, and other agencies.[496] Mitchell Williams also helped with real estate matters (some involving David Hale

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[491] Foster Chronology of the Rose Law Firm Representation of Madison Guaranty Savings & Loan (Mar. 26, 1992) (Doc. Nos. 1180-00000236 through 237).

[492] Clark 12/2/97 GJ at 135 (no evidence in Rose's files of any more collection efforts); Bunch 1/20/98 GJ at 30 (no other bills sent).

[493] The McDougals purchased Woodruff County Savings and Loan on January 26, 1982, with Steve Smith, C.E. Ransom, and Julie Baldridge. Memo from Lornea Wells, Legal Assistant at Mitchell Williams, to John Selig, Partner with Mitchell, Williams, about Madison Guaranty Savings & Loan/McDougal Group (Oct. 23, 1987) (Doc. No. 174-00012956).

[494] J. McDougal 4/2/97 GJ at 134-35; but see J. McDougal 8/96-6/97 Int. at 12.

[495] J. McDougal 8/96-6/97 Int. at 7, 33.

[496] See Tucker 9/23/81 Depo. at 13-14, First Nat'l Bank of Huntsville v. Bank of

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and Dean Paul) and other general legal representation.[497] McDougal later testified that he was satisfied with Mitchell Williams throughout its representation and, until his conversation with Governor Clinton, had no intention of hiring Rose.[498]

B. Madison Guaranty Initially Retained Rose on Two Issues before State Regulators.

Rose's representation of Madison Guaranty began April 23, 1985, with two matters; one a preferred stock offering and the other a limited partnership/broker-dealer matter. The stock offering was Madison Guaranty's attempt to raise money and increase its net worth by issuing a new class of preferred stock. Both the Arkansas Securities Department ("ASD") and the Federal Home Loan Bank Board ("FHLBB") had directed Madison Guaranty to increase its net worth to meet state and federal requirements. Madison Guaranty wanted to increase its net worth with the stock offering, but needed approval from the ASD, and Arkansas law was unclear whether a thrift could issue a non-voting, preferred class of stock. Rose was hired to get the ASD's approval. The limited partnership matter, also called the broker-dealer matter, was Madison Guaranty's effort to establish a subsidiary investment broker-dealer to sell real estate limited partnerships. Like the preferred stock, the limited partnership/broker-dealer required ASD

Kingston No. E-81-112 (Ch. Ct. Madison County, Ark.) (Doc. Nos. 1171-00000125 through 126).

[497] Information about the scope of Mitchell Williams's representation of Madison Guaranty is found in the voluminous billing records produced by Mitchell Williams to the OIC under subpoena. Grand Jury Subpoena No. 155 (E.D. Ark. May 3, 1994). See Response Letters from Mitchell Williams, Selig, Gates and Woodyard Law Offices to Office of the Independent Counsel (Doc. Nos. 155-00006309; 155-00039041; 155-00039043; 155-00054759 through 54760; 155-00056160; 155-00057157 through 57159). That firm also later defended Madison Guaranty in Seth Ward's breach of contract action against it in 1987-1988.

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approval. Rose associate Richard Massey billed more hours than any other Rose attorney on these two ASD matters; Mrs. Clinton billed more time than any other Rose partner.

1. Arkansas Securities Department.

The ASD was a cabinet state level agency that regulated state-chartered thrifts,[499] ensuring they operated soundly and complied with Arkansas regulations.[500] The head of the ASD was the Arkansas Securities Commissioner, who was nominated by the Governor and confirmed by the state senate,[501] and who also served as Arkansas Savings and Loan Supervisor.[502] Beverly Bassett served as Securities Commissioner from January 1985 through January 1991.[503] The Commissioners who preceded Bassett were Lee Thalheimer, Harvey Bell, and John Selig.[504] Beverly Bassett had worked on Madison Guaranty matters while an associate at Mitchell Williams. She left Mitchell Williams in January 1985 when she was appointed by Governor

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[498] J. McDougal 4/2/97 GJ at 134-35.

[499] Other responsibilities of the ASD included the regulation of securities (e.g. stocks and bonds), credit unions, mortgage companies, loan brokers, and check issuers (e.g. those who issue money orders, travelers checks, etc.). C. Handley 10/3/95 GJ at 5. The ASD did not regulate banks. The regulation of banks was the responsibility of a separate agency, the Arkansas Bank Department. Id. at 13-14.

[500] Id. at 19. The ASD was responsible for enforcing the Arkansas Savings and Loan Act and the Arkansas Building and Loan Act. Id. at 13-14.

[501] Bassett 11/8/95 GJ at 52.

[502] C. Handley 10/3/95 GJ at 25.

[503] Beverly Bassett married in 1990 at which time she changed her name to Beverly Bassett Schaffer. She was later known as Beverly Schaffer. Throughout this report, she will be referred to by the name she had for the period being discussed.

[504] Governor Frank White, a Republican, appointed Thalheimer. Governor Clinton, who succeeded White in 1983, permitted Thalheimer to continue as Commissioner until Thalheimer resigned in late 1984.

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Clinton.[505]

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[505] Letter from Bill Clinton, Governor of Arkansas, to Beverly Bassett, Wright, Lindsey, and Jennings attorney (Jan. 22, 1985) (Doc. No. DEK219149). The Governor's Office issued a press release announcing Bassett's appointment (Jan. 18, 1985) (Doc. No. 319-00028649). Bassett's brother, Woody Bassett, was "a long time close friend and supporter of Bill Clinton's [who] ha[d] been active in Democratic Party matters for years." Memo from Beverly Bassett Schaffer, Wright, Lindsey and Jennings attorney, to Jeff Gerth, New York Times Reporter at 2 (Feb. 25, 1992) (Doc. No. 174-00022194). Sometime in mid-1984, Bassett learned that Thalheimer, who was a friend of Bassett's and a law school classmate of her brother, was considering stepping down as Arkansas Securities Commissioner. Memo from Beverly Bassett Schaffer, Wright, Lindsey, and Jennings attorney, to Jeff Gerth, New York Times Reporter at 2 (Feb. 25, 1992) (Doc. No. 174-00022194). After confirming Thalheimer's intent to leave, Bassett and her brother spoke informally to Governor Clinton about her interest in becoming the new Securities Commissioner, and was soon formally appointed as of January 21, 1985. Bassett 11/8/95 GJ at 43-45; Letter from Governor Bill Clinton to Beverly Bassett (Jan. 22, 1985) (Doc. Nos. DEK219149, DEK219147). Woody Bassett also wrote several letters to Clinton commending his sister. See, e.g., Letter from Woody Bassett, Bassett Law Firm attorney, to Governor Bill Clinton (Nov. 26, 1984) (Doc. Nos. DEK218783 through 218785); Letter from Woody Bassett, Bassett Law Firm attorney, to Governor Bill Clinton (Dec. 19, 1984) (Doc. Nos. DEK218786 through 218787); Letter from Woody Bassett, Bassett Law Firm attorney, to Governor Bill Clinton (Dec. 7, 1984) (Doc. Nos. DEK218788 through 218789). At Selig's request, Jim McDougal, who knew Bassett, recommended Bassett to Governor Clinton. J. McDougal 8/96-6/97 Int. at 8. McDougal called Governor Clinton on December 22, 1984, to recommend Bassett. Message slip (Dec. 22, 1984) (Doc. No. DEK218791); see J. McDougal 4/2/97 GJ at 117. Bassett said she did not know McDougal recommended her, and she did not and would not have asked McDougal to recommend her. Senate Whitewater Comm. Hearing, supra note 147, at 72 (Jan. 25, 1996) (testimony of B. Schaffer). Bassett specifically asked members of her firm to stay out of the nomination process so she would not feel obligated to the firm or any of its clients. Id. at 148-149. Bassett testified she would not have wanted a recommendation from anyone in the thrift industry. Id. at 151. President Clinton said he did not remember whether McDougal recommended Bassett. W. Clinton 4/22/95 Depo. at 77.

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2. Madison Guaranty's Net Worth Problems.

After the McDougals purchased Madison Guaranty in 1982, its deposits grew rapidly.[506] This growth made its pre-existing financial problems worse.[507] Deposits are liabilities for a savings and loan -- money owed to others -- while loans were assets -- money owed to it by others. Madison Guaranty's liabilities were nearly equal to and sometimes exceeded its assets, leaving it little net worth.[508] Federal regulations required thrifts like Madison Guaranty to maintain a three percent net worth.[509] Throughout the McDougals' ownership, this regulation was a substantial problem.

The FHLBB first examined Madison Guaranty under the McDougals' ownership in January 1984.[510] Its Report of Examination criticized Madison Guaranty's asset growth and net

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[506] Madison Guaranty's assets were $6.6 million in 1982, $17 million in 1983, $49 million in 1984, and $110 million in 1985. Pillsbury Madison & Sutro LLP, General Report on the Investigation of Madison Guaranty Savings & Loan and Related Entities: Prepared for Resolution Trust Corporation 10 (Dec. 28, 1995).

[507] See Memo from John Mitchell, Supervisory Analyst, Federal Home Loan Bank of Dallas, to File (Nov. 20, 1984) (Doc. Nos. 99-00005396 through 5399). Madison Guaranty's problems preceded McDougal. When McDougal purchased Madison Guaranty, "[i]t was broke. It had a negative net worth. It was in imminent danger of being closed by the regulators." J. McDougal 4/2/97 GJ at 23.

[508] Pillsbury Madison & Sutro LLP, General Report on the Investigation of Madison Guaranty Savings & Loan and Related Entities: Prepared for Resolution Trust Corporation 6 -14 (Dec. 28, 1995).

[509] FHLBB Regulation 563.13

[510] Report of Special Limited Examination (Jan. 20, 1984) (Doc. Nos. 212-00001601 through 1619). Madison Guaranty was also the subject of a "Special Limited Examination" in Apr. 1982, which noted a substantial decline in net worth. Memo from John Mitchell, Supervisory Analyst, Federal Home Loan Bank of Dallas, to File (Nov. 20, 1984) (Doc. Nos. 99-00005396 through 5399).

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worth, indicating that if Madison Guaranty properly recognized sales of real estate from its real estate investment corporation (Madison Financial), Madison Guaranty would have shown a negative net worth of $70,000.[511] The Report of Examination concluded that Madison Guaranty was in trouble because of real estate projects.[512] In July 1984, Jim McDougal executed a "Supervisory Agreement" with the FHLBB's parent agency, the Federal Savings and Loan Insurance Corporation ("FSLIC"). Madison Guaranty agreed to try to increase net worth.[513] The ASD received the FHLBB Report of Examination and FSLIC's Supervisory Agreement, and knew all about Madison Guaranty's net worth problems.[514] John Latham conceded the problems in a January 14, 1985 letter to the FHLBB's supervisory agent: "We recognize that the Association's total assets have been growing at a faster rate than its net worth has . . . . We are very cognizant of our net worth position and monitor it very closely on a daily basis."[515]

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[511] FHLBB Report of Special Limited Examination at 6 (Jan. 20, 1984) (Doc. No. 212-00001606).

[512] Id. at 2 (Doc. No. 212-00001602).

[513] FHLBB Supervisory Agreement (July 19, 1984) (Doc. Nos. 54-00361839 through 361844). FHLBB regulation 563.13 required a federally insured thrift to have a net worth of at least 3 percent of assets.

[514] Bassett testified the FHLBB directed Madison Guaranty to raise money to improve its net worth. Bassett 4/14/94 FDIC Aff. at 1. She also said the ASD worked closely with the FHLBB to remedy Madison Guaranty's problems. Bassett 1/12/94 Int. at 2.

[515] Letter from John Latham, Chairman of Madison Guaranty, to Carol Ondrake, Supervisory Agent, Federal Home Loan Bank (Jan. 14, 1985) (Doc. Nos. 99-00031540 through 31542).

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3. Preferred Stock Idea: After Madison Guaranty Employees Worked on the Proposal, Regulators Denied the Application.

Madison Guaranty proposed to raise money by issuing a new class of preferred stock.[516] No state-chartered thrift in Arkansas had asked to issue preferred stock before Madison Guaranty's request;[517] whether it could do so under state law was an open question. Mitchell Williams opened a file on the preferred stock issue on February 6, 1985; it was entitled, "Sale of Stock."[518] The file remained empty and Mitchell Williams billed no fees.[519] On February 27, 1985, Madison Guaranty filed its business plan with the FHLBB,[520] but did not mention issuing preferred stock as a method of raising money.[521]

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[516] Bassett testified the federal regulators commonly recommended that small thrifts with net worth problems issue preferred stock as a way to raise money for the institution. Senate Whitewater Comm. Hearing, supra note 147, at 54-55 (Jan. 25, 1996) (testimony of B. Schaffer); see also J. McDougal 4/2/97 GJ at 29 (stock idea was in response to regulators' demand to raise money); C. Handley 10/3/95 GJ at 50-52.

[517] Senate Whitewater Comm. Hearing, supra note 147, at 240-41 (Jan. 25, 1996) (testimony of C. Handley).

[518] Letter from Mitchell, Williams, Selig, Jackson & Tucker Law Offices to Sarah Hawkins, Senior Vice-President, Madison Guaranty, enclosing a Preliminary Offering Circular (Dec. 3, 1985) (Doc. Nos. 155-00001504 through 1506). More than one month later, Mitchell Williams opened another matter on Madison Guaranty's account, entitled "Broker-Dealer." (Doc. Nos. 155-00001507 through 1509). The broker-dealer file was also empty. These were the ninth and tenth matters opened by Mitchell Williams for Madison Guaranty.

[519] John Selig, a partner at Mitchell Williams who handled most of Madison Guaranty's regulatory work, said he did not remember doing any work or opening a file for Madison Guaranty on the preferred stock matter and speculated "[i]t may be that [Madison Guaranty] asked us initially about it and then decided not to use us." Selig 7/18/96 GJ at 19-20.

[520] Business Plan with FHLBB (Feb. 27, 1985) (Doc. Nos. 99-00031549 through 31567).

[521] See id.

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On April 3, 1985, Madison Guaranty executives met with FHLBB officials.[522] Madison Guaranty asked for the meeting so its management could get acquainted with the FHLBB's regulatory personnel and "discuss the business plan previously submitted by Madison."[523] Madison Guaranty officials told the FHLBB that they planned to raise money by issuing preferred stock, and that they already had a buyer.[524]

That same day, Madison Guaranty employee Davis Fitzhugh called the ASD to obtain the forms required to issue preferred stock.[525] Fitzhugh's request was referred to ASD supervisor Charles Handley.[526] Handley researched whether Arkansas law permitted a state-chartered thrift to issue preferred stock, and called Fitzhugh back to tell him that Arkansas law did not permit a

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[522] John Latham, Madison Guaranty's CEO; Greg Young, Madison Guaranty's CFO; and Sarah Worsham-Hawkins, formerly an examiner with the FHLBB and then a Sr. Vice-President of Madison Guaranty, attended the meeting for Madison Guaranty. Memo from John Mitchell, Supervisory Analyst, Federal Home Loan Bank of Dallas to File. Three analysts and a supervisory agent from the FHLBB also attended the meeting. Memo from John Mitchell, Supervisory Analyst, Federal Home Loan Bank of Dallas, to File (Apr. 3, 1985) (Doc. No. 99-00005342). This meeting may have happened on April 2, 1985. An apparent sign-in sheet for the meeting is dated "4-2-85." (Doc. No. 99-00031589).

[523] Memo from John Mitchell, Supervisory Analyst, Federal Home Loan Bank of Dallas, to File about Madison Guaranty S&LA ("Madison"), Little Rock, Arkansas, FHLBB No. 7601 (Apr. 3, 1985) (Doc. No. 99-00005342).

[524] Id.

[525] See Memo from Charles [Handley], Supervisor, Arkansas Securities Department, to Beverly [Bassett], Arkansas Securities Department Commissioner (Apr. 3, 1985) (Doc. Nos. 105-00009527 through 9529). Fitzhugh was a lawyer with a Masters Degree in Business Administration. Fitzhugh 2/9/95 Int. at 1-2.

[526] See Memo from Charles [Handley], Supervisor, Arkansas Securities Department, to Beverly [Bassett], Arkansas Securities Department Commissioner (Apr. 3, 1985) (Doc. Nos. 105-00009527 through 9529).

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state-chartered thrift to issue preferred stock.[527] Handley said Madison Guaranty's attorneys could submit a legal opinion on the issue.[528]

On April 16, 1985, Fitzhugh sent a memorandum to Latham, concluding that it was permissible for a state-chartered thrift to issue a preferred class of stock.[529] On April 18, 1985, McDougal sent Latham a memorandum stating there was a buyer lined up, later identified by McDougal as Senator William Fulbright,[530] and urged Latham to promptly issue the new stock.[531] Five days after McDougal's memorandum, McDougal and Latham met with Mrs. Clinton, and Rose's formal representation of Madison Guaranty on the stock offering began.[532]

4. Limited Partnership/Broker-Dealer Matter.

The limited partnership proposal was Jim McDougal's idea and apparently not directly related to Madison Guaranty's net worth problems. McDougal's concept was to develop real estate projects and syndicate investments in the projects through limited partnerships.[533] The

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[527] See id.

[528] Handley sent copies of his memo and copies of the cited statutes and opinions to Beverly Bassett, Arkansas Securities Department Commissioner and Davis Fitzhugh, Real Estate Attorney and then Vice-President of Madison Guaranty and Loan (Doc. No. 105-00009528).

[529] Memo from Davis Fitzhugh, Vice-President Madison Guaranty, to John Latham, Madison Guaranty Executive Vice President, about Statutes on Issuance of Preferred Stock (Apr. 16, 1985) (Doc. Nos. 105-00009511 through 512).

[530] J. McDougal 4/2/97 GJ at 120.

[531] Memo from Jim McDougal to John Latham, Madison Guaranty Executive Vice President (Apr. 18, 1985) (Doc. No. 174-00033162). McDougal later said Senator Fulbright said he would have interest in buying the preferred stock. J. McDougal 4/2/97 GJ at 119-120.

[532] Statement written by Mrs. Clinton re: Rose Law Firm's representation of Madison Guaranty (1992) (Doc. Nos. DEK200962 through 200963).

[533] Fitzhugh 6/4/96 Int. at 4; Fitzhugh 10/22/96 Int. at 6; Fitzhugh 1/31/96 Senate

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limited partnerships would be offered through a newly formed, Madison Guaranty-controlled broker/dealer.[534] Arkansas regulations required a thrift to get approval from the ASD before establishing the subsidiary. Davis Fitzhugh was hired by McDougal and Latham in March 1985 primarily to set-up the broker/dealer to sell securities and real estate limited partnerships.[535]

5. Madison Guaranty Retained Rose in April 1985.

On Tuesday, April 23, 1985, Rose's representation of Madison Guaranty began when Mrs. Clinton met with Jim McDougal and John Latham at Madison Guaranty. The first entry on Rose billing records for Madison Guaranty was recorded by Mrs. Clinton, who billed two hours for 1) a conference with Jim McDougal and John Latham; 2) a conference with Rick Massey; and 3) a conference with her law partner Watt Gregory.[536] Massey's entries for that day show that he had a conference with Mrs. Clinton; a conference with John Latham; a conference with Rose associate Les Baledge; and research on a "preferred stock offering."[537]

Whitewater Comm. Depo at 101.

[534] Fitzhugh 6/4/96 Int. at 4; Fitzhugh 10/22/96 Int. at 6. Contemporaneous with Fitzhugh's employment at Madison Guaranty, Madison Guaranty purchased Thorpe & Company, a dormant broker/dealer. Fitzhugh 10/22/96 Int. at 6; Fitzhugh 1/15/96 Senate Whitewater Comm. Depo. at 41-42.

[535] Fitzhugh 1/15/96 Senate Whitewater Comm. Depo. at 29-31; Senate Whitewater Comm. Hearing, supra note 147, at 4 (Jan. 31, 1996) (testimony of D. Fitzhugh). Fitzhugh said he worked on at least two real estate projects which were to be, but were not, sold in parcels by limited partnerships. Fitzhugh 6/4/96 Int. at 1-4. One of the projects was the syndication of the Levi Strauss building, and the other project was the development and syndication of property located at 12th and Main Streets in Little Rock. Fitzhugh 6/4/96 Int. at 1-4.

[536] Rose Billing Records (May, 9, 1985) (Doc. No. DEK014950). The morning portion of Mrs. Clinton's personal calendar for April 23 says: "9 -- McDougal." Hillary Clinton's personal calendar (Apr. 23, 1985) (Doc. No. 319-00034730).

[537] Rose Billing Records (May 2, 1985) (Doc. No. DEK014947). Mrs. Clinton

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On April 24, an internal Madison Guaranty memorandum from Latham to Greg Young, Madison Guaranty's comptroller, announced Madison Guaranty's retention of Rose.[538] Madison Guaranty sent its first retainer check to Rose on May 2, 1985, for $2,000.[539] For all but two of the next fifteen months -- through July 1, 1986 -- Madison Guaranty sent Rose a monthly $2,000 retainer check.[540]

"review[ed] draft documents" and had "conferences" with Massey, Latham, and Davis Fitzhugh. Massey and Sharon Grimes, a paralegal at Rose, conducted legal research and "draft[ed] documents." Rose Billing Records (May 2, 1985) (Doc. No. DEK014947).

[538] Memo from John Latham, Chairman of the Board, Madison Guaranty and Loan, to Greg Young, CPA, Madison Guaranty (Apr. 24, 1985) (Doc. No. 54-00266226) ("Greg, we have retained the Rose law firm. We will be paying them a retainer of $2,000 per month. Please go ahead and send the first $2,000 check to the firm, in care of Hillary Clinton").

[539] Check No. 2340 from the account of Madison Guaranty signed by Greg Young payable to Rose for $2,000 (May 2, 1985) (Doc. No. 54-00231271).

[540] The Independent Counsel discovered no evidence of a written engagement agreement between Madison Guaranty and Rose. Rose billed Madison Guaranty its usual hourly rates and used the monthly retainer as a prepayment against fees actually incurred by Rose. The "retainer" was not a monthly payment made without regard to actual work performed. McDougal stated that he had never paid a retainer to a law firm before. McDougal 8/1/96-6/9/97 Int. at 10. Latham stated that Rose was the only law firm Madison Guaranty ever had on retainer. Latham 2/14/95 Int. at 3. Internal Madison Guaranty documents refer to the monthly retainer payments to Rose as "prepaid legal fees." See, e.g., Check No. 2340 from Madison Guaranty to Rose for $2,000 (May 2, 1985) (Doc. No. 54-00266225); Check No. 3370 from Madison Guaranty to Rose for $2,000 (Oct. 31, 1985) (Doc. No. 54-00264667); Check No. 5153 from Madison Guaranty to Rose for $2,000 (Nov. 29, 1985) (Doc. No. 054-00264668); Check No. 5294 from Madison Guaranty to Rose for $2,000 (Dec. 27, 1985) (Doc. No. 054-00264669); Check No. 5494 from Madison Guaranty to Rose for $2,000 (Jan. 31, 1986) (Doc. No. 54-00260954); Voucher No. 135 about Rose January 1, 1986 billing (Feb. 19, 1986) (Doc. No. 54-00260973); Voucher No. 4372 about Rose January 1986 billing (Feb. 19, 1986) (Doc. No. 54-00260974); Check No. 6069 from Madison Guaranty to Rose for $2,000 (Mar. 28, 1986) (Doc. No. 54-00260956); Check No. 6612 from Madison Guaranty to Rose for $2,000 (July 1, 1986) (Doc. No. 54-00282220).

The second and third checks to Rose dated May 17, 1985 and July 22, 1985 were for $2,018.00 and $3,023.20, respectively. Check No. 2431 from Madison Guaranty to Rose for

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In 1985, the decision whether to require pre-payment on a retainer fee from a client was up to the responsible attorney.[541] Ronald Clark, Rose's Chief Operating Officer, testified, "back in those days, it was a little bit unusual for [Rose] to get a retainer. . . . [E]ven to this day [1994], it's very seldom -- except for large clients, maybe . . . . "[542] Webster Hubbell, Chief Operating Officer at Rose from 1985 through 1988, said retainers were unusual, and did not remember any client other than Madison Guaranty on retainer.[543] But Mrs. Clinton said retainer agreements were not unusual:

> I can't recall their name to you right now, but it was not unusual to ask a client, a new client or a client that perhaps there had been some billing problems with in the past, to make a deposit against fees and expenses.[544]

As billing attorney, almost all of Madison Guaranty's retainer checks were addressed to Mrs. Clinton.[545]

$2,018 (May 17, 1985) (Doc. No. 54-00231446); Check No. 2802 from Madison Guaranty to Rose for $43,023.20 (July 22, 1985) (Doc. No. 54-00232199). The difference represents fees incurred in excess of the $2,000 retainer.

[541] Letter from Alden L. Atkins, Vinson & Elkins attorney, to Bruce A. Ericson, Pillsbury, Madison, & Sutro, Counsel to RTC, at 6 (Oct. 31, 1995) ("In 1985, Rose Law Firm did not have any policy about retainers or client advances. The decision about whether a retainer or client advance would be requested was left to the discretion of each lawyer depending on the circumstances of the particular matter"); see also Giroir 7/18/96 GJ at 11-12.

[542] Clark 3/30/94 GJ at 58.

[543] Hubbell 12/19/95 GJ at 187-88.

[544] H. Clinton 4/22/95 Depo. at 14.

[545] Check Nos. 2431, 2991, 3201, 3370, 5153, 5294, 5494, 6069, 6196, 6612, 6760, 7154 from the account of Madison Guaranty signed by Lisa McEntire payable to "Rose Law Firm, Attn: Hillary Clinton." for amounts ranging from $2,000 to $2,018 (May 1985 -- Oct. 1986) (Doc. Nos. 54-00231446, 54-00232674, 54-00233116, 54-00233456, 54-00234001, 54-00234265, 54-00211033; 54-00212147, 54-00212393, 54-00214419, 54-00215014, 54-

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6. Rose Worked on the Preferred Stock Matter.

Before Madison Guaranty could issue its preferred stock, Rose had to convince the ASD that Arkansas law allowed a savings and loan to issue a preferred class of stock. In addition to Mrs. Clinton's conferences on April 23 with McDougal, Latham, Massey, and Gregory, Massey billed 2.8 hours for conferences and "research on preferred stock offering."[546] The next day, April 24, Massey billed 2.2 hours for "research" and "drafting documents," and Sharon Grimes, a paralegal at Rose, billed 6.5 hours for drafting corporate documents and "related research."[547] Mrs. Clinton billed 1.5 hours on April 24 for "telephone conferences with R. Massey, John Latham, Davis Fitzhugh," and for "review[ing] draft documents."[548]

On Thursday, April 25, Massey billed 2.2 hours for "drafting & revis[ing] documents" and conferences with Latham and Mrs. Clinton.[549] Mrs. Clinton billed one half hour for

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00216137). How Mrs. Clinton came to be billing attorney on the Madison Guaranty account is disputed, and conflicting statements on this are discussed in Chapter 3 of this Part. The billing attorney was responsible for assigning and supervising legal work in addition to reviewing and sending bills to the client. Giroir 7/18/96 GJ at 13. An April 29, 1985 Rose document called "The Daily Briefs" announced Madison Guaranty as a new client and identified Mrs. Clinton as "attorney" for the account. Rose Daily Briefs (Apr. 29, 1985) (Doc. No. 105-00008011). "The Daily Briefs" the next day announces another Madison Guaranty matter -- the broker/dealer -- and Mrs. Clinton again as the attorney. Rose Daily Briefs (Apr. 30, 1985) (Doc. No. 105-00008012).

[546] Rose Billing Records (May 1985) (Doc. No. DEK014950). Les Baledge, an associate at Rose, also billed 1.1 hour for a "conference" with Massey. Id.

[547] Id. The documents drafted appeared to be corporate minutes and resolutions to amend Madison Guaranty's certificate of incorporation to create a preferred class of stock.

[548] Id.

[549] Id.

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"review[ing] subscription agreement" and a conference with Massey.[550] On Friday, April 26, Massey continued his research and drafting, billing 2.3 hours.[551] Watt Gregory billed one hour for a conference with Massey and "review of consent on draft subscription agreement."[552]

Research and document drafting culminated between Monday, April 29, and Tuesday, April 30, with Mrs. Clinton billing one hour for a "telephone conference" with Beverly Bassett and a "telephone conference" with Massey on the preferred stock matter. [553]

The day after Mrs. Clinton's conference with Bassett, Rose sent a two-page opinion letter to the ASD arguing that, contrary to Handley's opinion, Arkansas law allowed a thrift to issue a preferred class of stock.[554] The letter was addressed to Handley and copied to Beverly Bassett.[555]

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[550] Id.

[551] Id.

[552] Id. The billing records also showed that on Friday, April 26, Mrs. Clinton and Massey began their first work on the limited partnership/broker-dealer matter. Id.

[553] Id. ("telephone conference with B. Bassett, Securities Commissioner; telephone conference with R. Massey").

[554] Letter from Rose to Charles Han[d]ley, Supervisor, Arkansas Securities Department, cc: Hon. Beverly Bassett, Arkansas Securities Department Commissioner (Apr. 30, 1985) (Doc. Nos. RFL1 03182 through 3183) :

> Madison Guaranty, a Savings and Loan chartered under the laws of the State of Arkansas, contemplates a capitalization plan whereby it would authorize and issue a class of nonvoting preferred stock which would have preference as to dividends and amounts paid in liquidation. The question has arisen as to whether an Arkansas chartered Savings and Loan Association may under Arkansas law create, authorize and issue a class of preferred stock. For the reasons stated below, we are of the opinion that a state chartered savings and loan may do so.
>
> Because the Arkansas statutes expressly give to an Arkansas chartered savings and loan all of the powers possessed by a corporation under the Arkansas Business Corporations Act, which powers include the power to create and issue a class of preferred capital stock, and because we find no express prohibition in Act

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The letter closed, "Should you require further information or assistance, please advise Hillary Rodham Clinton or Richard Massey of this firm" and was signed "Rose Law Firm."[556] Massey later testified that he had drafted the letter and included Mrs. Clinton's name as a contact because "she was the billing partner."[557] Massey also said that he did not think Mrs. Clinton told him who to send the letter to, though, "she could have."[558] Massey said it was the securities section's practice at Rose to sign "Rose Law Firm" to all correspondence stating a legal conclusion.[559] Massey also said Rose would "always copy" the Securities Commissioner on such a letter "as a matter of protocol."[560]

Mrs. Clinton later testified that she was not involved in drafting the letter to Bassett, and did not remember whether she saw or approved the letter before it was sent.[561] Mrs. Clinton has

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227 against the creation or issuance of such a class of preferred stock, we have concluded that Madison Guaranty Guaranty's proposed capitalization plan is not inconsistent with Arkansas law. Should you require further information or assistance, please advise Hillary Rodham Clinton or Richard Massey of this firm.

[555] Id.

[556] Id.

[557] Senate Whitewater Comm. Hearing, supra note 147, at 109 (Jan. 11, 1996) (testimony of R. Massey). Massey testified he "would have routinely included the billing partner's name on the first letter written on the first engagement for this client, and without regard to who that partner was." Id.

[558] Id. at 113-14.

[559] Massey 11/7/95 GJ at 26.

[560] Id. at 30-31.

[561] H. Clinton 4/22/95 Depo. at 23 ("I did not have anything to do with preparation of the letter. Whether I saw it before it went out or not, I cannot tell you").

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said her name was used because she was the billing partner.[562] Asked whether she authorized Massey to use her name on ASD correspondence, Mrs. Clinton testified, "Not that I recall . . . ."[563]

In response to Rose's letter, Handley reiterated his contrary position in a May 6, 1985 memorandum to Bassett and Nancy Jones, the Assistant Securities Commissioner.[564] Jones agreed in part and disagreed in part with Handley's analysis, concluding that it might have been possible for Madison Guaranty to issue preferred stock.[565]

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[562] H. Clinton Whitewater Press Conference (Apr. 22, 1994) ("But because I was what you call the billing attorney, in other words I had to send the bill to get the payment made, my name was put at the bottom of the letter"); see also H. Clinton 1992 Draft Campaign Statement at 2 (1992) (Doc. Nos. DEK009889 through 9890) ("Massey has stated he does not know why he included my name in the letter to the Securities Commissioner, and I do not know either and do not recall ever seeing it before it was sent. . . . . Massey has said his secretary may have included my name in error").

[563] H. Clinton 4/22/95 Depo. at 28.

[564] Routing Slip to Beverly [Bassett] and Nancy [Jones] from Charles [Handley] (May 6, 1985) (Doc. No. RLF1 03185); C. Handley 10/3/95 GJ at 52 ("I, as the supervisor, was the initial one to review that application, and I had some concerns about that because our act only speaks of one class of stock, permanent capital stock, which would be common stock, not preferred"). Jones was a CPA. Jones 11/1/95 GJ at 3.

[565] Memo from NJ [Nancy Jones] (May 6, 1985) (Doc. No. RLF1 03186):

1). I agree with Charles that this must be permanent capital stock payable in liquidation after savings accounts. I believe it would be.

2). I disagree w/ Charles that it has to be done under the wild card statute. I believe the Rose firm's analysis regarding ordinary business corporations is correct.

3). The problem, not addressed by the Rose firm, is the NON VOTING portion. I don't know if "capital notes" authorized under federal statute is non-voting, but the preferred stock is a similar debt/equity instrument.

4). They have to get through our regulation section & FSLIC too!

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Bassett reviewed the materials and wrote a note to staff attorney Bill Brady at the top of Jones' memorandum to "please review and draft response to Hillary."[566] Brady subsequently sent a memorandum to Bassett disagreeing with Rose's analysis and suggesting that Bassett refer the matter to the Arkansas Attorney General for an opinion.[567] Brady later testified that he had not seen the memorandum since giving it to Bassett, which indicated to him that she disagreed with his conclusion.[568]

Bassett later stated that there were "conflicting impressions and opinions" among ASD staff[569] and that she had meetings with Handley and Jones, and ultimately all agreed with Rose's interpretation.[570] Bassett said she did not refer the matter to the Attorney General for an opinion because that office did not have the necessary expertise and it was the ASD's job to render such an opinion.[571]

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[566] Id.

[567] Brady 5/18/94 RTC Aff. at 1 ("My research revealed that the issuance of preferred stock by an Arkansas chartered savings and loan had never been approved before this request. . . . . [I] did not agree with the Rose Law Firm interpretation of the Arkansas statute"); see also Senate Whitewater Comm. Hearing, supra note 147, at 84-85 (Jan. 25, 1996) (testimony of W. Brady) (advising to seek the Attorney General's opinion).

[568] Brady 5/18/94 RTC Aff. at 1; Senate Whitewater Comm. Hearing, supra note 147, at 85-86 (Jan. 25, 1996) (testimony of W. Brady). No such Memo was produced to the OIC or identified by any other witness.

[569] Senate Whitewater Comm. Hearing, supra note 147, at 94-95 (Jan. 25, 1996) (testimony of B. Schaffer).

[570] Bassett 4/14/94 FDIC Aff. at 2. Handley agreed that he, Bassett, and Jones met to discuss the issue and that he changed his opinion. C. Handley 10/3/95 GJ at 59. Jones does not remember meeting, but said she may have done so. Jones 5/12/94 RTC Aff. at 3-4.

[571] Senate Whitewater Comm. Hearing, supra note 147, at 277 (Jan. 25, 1996) (testimony of B. Schaffer).

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On May 14, 1985, Bassett sent a response to Mrs. Clinton.[572] Bassett wrote:

> Dear Hillary:
> . . .
>
> I agree with your analysis and conclusion of the question whether an Arkansas chartered savings and loan association may under Arkansas law create, authorize and issue a class of preferred stock. . . . Accordingly, as the Savings and Loan Supervisor, I concur in your opinion that Madison's proposed capitalization plan is not inconsistent with Arkansas law.[573]

Bassett said she addressed the letter to Mrs. Clinton because Mrs. Clinton was the partner identified in Rose's letter as a contact and because she had spoken to Mrs. Clinton about the issue.[574] Mrs. Clinton testified that she "assume[d]" she received the letter because "it came to me," though she would have sent it to Massey.[575]

On May 23, 1985, Mrs. Clinton wrote McDougal, forwarding Bassett's letter:

> Dear Jim:
>
> Enclosed is a letter for your files from Beverly Bassett, approving the proposed authorization and issuance of a class of non-voting preferred stock. We appreciate the opportunity to work for you and look forward to continuing success in resolving whatever questions arise as you continue your plan for growth.[576]

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[572] Letter from Beverly Bassett, Arkansas Securities Department Commissioner, to Hillary Clinton (May 14, 1985) (Doc. No. RLF1 03184).

[573] Letter from Beverly Bassett, Arkansas Securities Department Commissioner to Hillary Clinton (May 14, 1985) (Doc. No. RLF1 03184). The Independent Counsel agreed Bassett's analysis and opinion appeared to be in accord with Arkansas law.

[574] Bassett 11/8/95 GJ at 76-77.

[575] H. Clinton 4/22/95 Depo. at 24; see also H. Clinton 1992 Draft Campaign Statement at 2 (1992) (Doc. Nos. DEK009889 through 9890) ("I also do not recall receiving the letter addressed to me from the Commissioner, because if I had seen it I would have immediately sent it to Massey").

[576] Letter from Hillary Rodham Clinton to Jim McDougal (May 23, 1985) (Doc. No. 0000084). Copies of the letter went to Latham and Massey.

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Mrs. Clinton could not remember why she, rather than Massey, forwarded Bassett's letter to McDougal.[577]

McDougal wrote a note to Latham at the top of Bassett's letter: "John: Be sure we keep their $2,000 a month retainer paid. Jim."[578] In the first week of Rose's representation, it billed more than twenty-three hours on the preferred stock matter,[579] and in the next eight months -- May through December 1985 -- Rose billed only twenty-seven additional hours.[580] The ASD had given Madison Guaranty until the end of December 1985 to meet its net worth requirements before it could issue the stock, but Madison Guaranty never met them. By December 1985, Madison Financial had acquired the IDC property. Madison Guaranty was able to fraudulently increase its net worth through those transactions by making it appear on paper the IDC property was being re-sold for substantial profits; those fraudulent sales all being made to insiders almost wholly financed by Madison Guaranty. The fraudulent Castle Grande transactions achieved the same result the stock offering was intended to achieve -- increasing Madison Guaranty's net worth to comply with regulatory requirements.[581]

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[577] H. Clinton 2/14/96 FDIC Int. at 35-36.

[578] McDougal 4/2/97 GJ at 121. McDougal later acknowledged the note to Latham was in his handwriting, but he did not remember receiving the letter. J. McDougal 8/96-6/97 Int. at 13-14; Letter from Hillary Rodham Clinton to Jim McDougal (May 23, 1985) (Doc. No. RTC KC 39624).

[579] See Rose Billing Records (May 1985) (Doc. No. DEK014950).

[580] See Rose Billing Records (May through Dec. 1985) (Doc. Nos. DEK014960, 014971, 014976, 014985, 015009 through 15010).

[581] J. McDougal 4/2/97 GJ at 88-90.

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7. Rose Worked on the Limited Partnership/Broker-Dealer Matter.

Rose attorneys first worked on the limited partnership/broker-dealer matter on April 26, 1985, when Mrs. Clinton billed two hours for a conference with Latham, Fitzhugh, and Massey.[582] Massey subsequently consulted with various Madison Guaranty personnel and conducted legal research culminating, on May 14, 1985, in a nine-page application to the ASD for Madison Guaranty to engage in "certain brokerage services through a second-tier service corporation."[583] Charles Handley again reviewed Madison Guaranty's application.[584] Handley's primary concern was Madison Guaranty's inability to sustain a viable, wholly-owned subsidiary because Madison Guaranty "d[id] not meet the minimum net worth requirements . . . of the [FHLBB]'s Regulations."[585]

Massey responded to Handley's May 22, 1985 memorandum with an amended application on June 17, 1985.[586] Again, Handley prepared a memorandum the next day for Bassett and Jones

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[582] Rose Billing Records (May 1985) (Doc. No. DEK014952). Massey's corresponding entry was 1.2 hours for a conference with Latham and Fitzhugh. Rose Billing Records (May 1985) (Doc. No. DEK014952).

[583] See Letter from Richard N. Massey, Rose attorney, to Charles Handley, Arkansas Securities Department Supervisor, enclosing an application to the Arkansas Savings and Loan Supervisory Board (May 14, 1985) (Doc. Nos. 105-00009456 through 9467).

[584] C. Handley 3/27/95 Int. at 3-4.

[585] Memo from Charles Handley, Arkansas Securities Department Supervisor, to Beverly Bassett, Arkansas Securities Department Commissioner and Nancy Jones, Arkansas Securities Department Assistant Commissioner, at 2 (May 22, 1985) (Doc. Nos. RLF2 03583 through 3584). Handley forwarded copies of each of his internal memoranda to Rose.

[586] Letter from Richard N. Massey, Rose attorney, to Beverly Bassett, Supervisor, Arkansas Securities Department Nancy Jones, Assistant Arkansas Securities Department Commissioner, and Charles Handley, Supervisor, Arkansas Securities Department (June 17, 1985) (Doc. Nos. RIC039285 through 39286).

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recommending denial.[587] Massey responded to Handley's second memorandum with a letter on July 10, 1985,[588] attaching documents containing various financial information about Madison Guaranty. Massey's response closed: "Should you have any questions, please call Hillary Rodham Clinton or me . . ."[589]

On July 17, 1985, Handley prepared another memorandum in response to Massey's letter, and again recommended that approval of the application be conditioned on Madison Guaranty's meeting net worth requirements.[590] This time Latham replied by sending a three-page letter to the ASD addressing Handley's financial concerns, attaching related financial information prepared by Madison Guaranty's accountants, Frost & Company.[591] On July 25, 1985, Massey also replied to

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[587] Memo from Charles F. Handley, Arkansas Securities Department Supervisor, to Beverly Bassett, Arkansas Securities Department Commissioner, and Nancy Jones, Arkansas Securities Department Assistant Commissioner (June 18, 1985) (Doc. Nos. 174-000096750 through 96751).

[588] Letter with enclosures from Richard N. Massey, Rose attorney, to Beverly Bassett, Arkansas Securities Department Commissioner, Nancy Jones, Arkansas Securities Department Assistant Commissioner, and Charles Handley, Arkansas Securities Department Supervisor (July 10, 1985) (Doc. Nos. 105-00009326 through 9354).

[589] Letter with enclosures from Richard N. Massey, Rose attorney, to Beverly Bassett, Arkansas Securities Department Commissioner, Nancy Jones, Arkansas Securities Department Assistant Commissioner, and Charles Handley, Arkansas Securities Department Supervisor at 2 (July 10, 1985) (Doc. No. 105-00009327).

[590] Memo from Charles F. Handley, Supervisor, Arkansas Securities Department, to Beverly Bassett, Arkansas Securities Department Commissioner, and Nancy Jones, Arkansas Securities Department Assistant Commissioner (July 17, 1985) (Doc. Nos. 5000213 through 214).

[591] Letter with enclosures from John Latham, President, Madison Guaranty, to Beverly Bassett, Arkansas Securities Department Commissioner, Nancy Jones, Assistant Commission, Arkansas Securities Department, and Charles Handley, Supervisor, Arkansas Securities Department, (July 24, 1985) (Doc. Nos. 105-00009224 through 9245).

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Handley's memorandum, relying on Madison Guaranty's accounting firm's (Frost & Company's) financial information to support Madison Guaranty's contention that its financial condition was sound.[592] Handley responded to Latham and Massey on July 27, 1985:

> I am still of the opinion that the approval of this application be conditioned on the Association meeting the net worth requirements of the FHLBB or at a minimum the Association filing a detailed and reasonable plan which reflects that these net worth requirements will be met within a very short time.[593]

On August 27, 1985, Latham, Massey, Handley, and Bassett met to discuss the application[594] and determined that "Madison's application to engage in brokerage activities would be approved on condition that Madison submit timetables of proposed activities which would serve to bring Madison in compliance with the minimum net worth requirements . . . by December 31, 1985."[595] On September 9, 1985, Massey sent a letter to the ASD memorializing the meeting and proposing that Madison Guaranty offer $3,000,000 of preferred stock as well as anticipated profit from a new limited partnership. He claimed this would produce sufficient

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[592] Letter from Richard N. Massey, Rose attorney, to Beverly Bassett, Arkansas Securities Department Commissioner, Nancy Jones, Assistant Arkansas Securities Department Commissioner, and Charles Handley, Supervisor, Arkansas Securities Department (July 25, 1985) (Doc. Nos. 105-00009246 through 9247).

[593] Memo from Charles F. Handley, Supervisor, Arkansas Securities Department, to Beverly Bassett, Arkansas Securities Department Commissioner, and Nancy Jones, Assistant Arkansas Securities Department Commissioner (July 27, 1985) (Doc. Nos. 105-00023391- 93).

[594] See Letter from Rick Massey, Rose attorney, to Beverly Bassett, Commissioner, Arkansas Securities Department (Sept. 9, 1985) (Doc. Nos. RLF2 03492-93); Rose Billing Records (Oct. 25, 1985) (Doc. No. DEK014999).

[595] Letter from Rick Massey, Rose attorney, to Beverly Bassett, Arkansas Securities Department Commissioner (Sept. 9, 1985) (Doc. Nos. RLF2 03492-93).

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revenue to bring Madison Guaranty in compliance with the net worth requirements.[596]

The ASD approved Madison Guaranty's application to engage in brokerage activities conditioned on Madison Guaranty's meeting necessary requirements by December 31, 1985.[597] On December 9, 1985, Handley asked Massey for the status of Madison Guaranty's progress[598] and on December 19, Massey sent Latham a proposed response to Handley's letter.[599] Massey proposed delaying the preferred stock offering, but offered additional funding through a subordinated debt offering.[600] On December 23, Latham went to see Handley and told him that a debenture application would be filed in mid-January, putting Madison Guaranty in compliance with net worth requirements.[601] Handley told Latham not to engage in brokerage activities until debentures were issued and Madison Guaranty came into compliance.[602] Madison Guaranty never did meet the minimum net worth requirements, and hence never created the broker-

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[596] Id.

[597] Letter from Beverly Bassett, Arkansas Securities Department Commissioner, to Richard Massey, Rose attorney (Oct. 17, 1985) (Doc. No. RLF1 03178).

[598] Letter from Beverly Bassett, Arkansas Securities Department Commissioner, written by Charles Handley, Supervisor, Arkansas Securities Department, to Richard Massey, Rose attorney (Dec. 9, 1985) (Doc. No. 105-00009474).

[599] Letter from Richard N. Massey, Rose attorney, to John Latham, President, Madison Guaranty (Dec. 19, 1985) (Doc. Nos. 105-00009471 through 9473).

[600] Id.

[601] Handley 12/19/95 Senate Whitewater Comm. Depo. at 113-115; Handley 3/27/95 Int. at 6.

[602] See Handwritten Memo from Charles [Handley], Supervisor, Arkansas Security Department, to Beverly [Bassett], Arkansas Securities Department Commissioner and file (Dec. 23, 1985) (Doc. Nos. 5000246 through 5000249).

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dealer.[603]

C. Castle Grande Transactions (Fall 1985 through Spring 1986).

The second connection between the McDougals, Madison Guaranty, the Clintons, and CMS was a real estate development originally purchased from the Industrial Development Corporation ("IDC"), later known as the 145th Street Property or Castle Grande. Using financing from Madison Guaranty, Jim McDougal purchased property in the name of Madison Financial and Seth Ward. To avoid regulatory scrutiny, Seth Ward (Webster Hubbell's father-in-law) was used as straw purchaser for some of the property. Rose did legal work on the initial purchase. Rose and Mrs. Clinton did legal work on the proposed development of the property.

1. The Relationship of Rose Partner Webster Hubbell and Madison Financial Employee Seth Ward.

The relationship of Seth Ward and Webster Hubbell began in 1971, when Hubbell married Suzanna Ward, Seth Ward's daughter.[604] Seth Ward, a successful Little Rock businessman, helped pay Hubbell's law school tuition and bought a house for them in Fayetteville (the location of the University of Arkansas).[605] Hubbell graduated from the University of Arkansas Law School in 1973, and joined Rose immediately on graduating. [606]

Seth Ward loaned or gave Hubbell money and property throughout the 1970s, 1980s, and

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[603] See Memo from [Beverly Bassett, Arkansas Securities Department Commissioner] to File (undated) (Doc. No. 105-00023442).

[604] Hubbell 12/27/95 Int. at 4; Hubbell 8/22/96 GJ at 3, 8.

[605] Seth "Skeeter" Ward II 1/21/98 GJ at 5-6; Letter from Webb Hubbell to Mr. and Mrs. Seth Ward (June 1, 1981) (Doc. No. 491-00000169); Hubbell 8/22/96 GJ at 3, 15-16.

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1990s.[607] Ward also provided Webb and Suzy with ownership interests in various businesses, including a Datsun dealership and a parking meter manufacturer, POM, Inc.[608] Ward often gave the Hubbells expensive gifts, including property.[609]

Hubbell provided legal services to Seth Ward and his businesses,[610] as did other Rose attorneys.[611] One of the companies Hubbell incorporated for Seth Ward was Deta, Incorporated. Ward formed Deta to buy POM,[612] and once Ward incorporated Deta, he gave the Hubbells five percent of the stock.[613] When POM was purchased, Seth Ward's son, Seth "Skeeter" Ward II, began running the company.[614]

Hubbell did legal work for POM without charging, although Rose charged for any work done by its other attorneys. Hubbell was POM's corporate secretary from 1981 to 1987, and chief legal counsel from 1981 until January 1993, when Hubbell joined the Department of Justice in Washington, D.C.[615] Hubbell owned stock in POM from 1981 until October 1989, when he

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[606] Hubbell 4/20/95 RTC-OIG/OIC Int. at 1; Hubbell 12/27/95 Telephone Int. at 3.

[607] Seth "Skeeter" Ward II 1/21/98 GJ at 4-7; Hubbell 8/22/96 GJ at 13-14.

[608] Hubbell 8/22/96 GJ at 11-13.

[609] Seth "Skeeter" Ward II 1/21/98 GJ at 4-7.

[610] Hubbell 3/16/95 FDIC-OIG Int. at 5-6; Seth "Skeeter" Ward II 1/21/98 GJ at 8; see also Hubbell 8/22/96 GJ at 6, 17-18, 28-32 (discussing Hubbell's legal work for and involvement with Ward's companies).

[611] Hubbell 3/16/95 FDIC-OIG Int. at 5-6.

[612] Id. at 6.

[613] Hubbell 8/22/96 GJ at 11; see also id. at 11-13 (discussing POM).

[614] Id. at 119-20.

[615] Hubbell 3/16/95 FDIC-OIG Int. at 6; Seth "Skeeter" Ward II 1/21/98 GJ at 13-15; Seth "Skeeter" Ward II RTC-OIG Int. at 1-7.

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transferred the stock to Skeeter Ward.[616] Rose typically sent POM monthly bills of $5,000, although after May 1990 that amount increased enormously because Rose handled a large lawsuit suit for POM against another company.[617] Skeeter Ward was unhappy with what he viewed as unnecessarily high legal bills from Rose: "I never really made an issue of it because I didn't want -- you know, I was trying to keep the peace in the family," he said. "That would raise -- somebody would raise hell over that."[618]

Skeeter Ward said Hubbell and Little Rock accountant Mike Schaufele "handled all of th[e] corporate mumbo jumbo stuff" for POM.[619] This "stuff" included Hubbell's service as POM's incorporator, "resident agent," and "the agent upon whom process against POM may be served."[620] Hubbell also did the legal work to amend POM's corporate bylaws.[621]

In 1995, Hubbell described his relationship with Seth Ward as "close."[622] Hubbell later wrote that their relationship disintegrated when Hubbell went to prison for fraud in 1995.[623] Early in 1995, the Independent Counsel granted Seth Ward, by then in his 70's, informal immunity from prosecution.

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[616] Hubbell 4/20/95 RTC-OIG/OIC Int. at 22; Seth "Skeeter" Ward II 1/21/98 GJ at 13.

[617] Seth "Skeeter" Ward II 1/21/98 GJ at 15, 18-24.

[618] Id. at 15.

[619] Id. at 31.

[620] Id. at 34-35.

[621] Id. at 43-44.

[622] Presentence Investigation Report for Webster Hubbell at Part C, ¶ 27 (June 21, 1995).

[623] Webb Hubbell, Friends in High Places 326 (1997). The November 1997 publication of Hubbell's book, Friends In High Places, deepened the Ward-Hubbell division. Seth "Skeeter" Ward II GJ 1/21/98 at 27

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2. Acquisition of the IDC Property (August through October 1985).

a. Madison Guaranty Hired Harry Don Denton and Seth Ward.

In April 1985, Jim McDougal hired Harry Don Denton, formerly senior lending officer at Union National Bank, to be Madison Guaranty's Chief Lending Officer in April 1985.[624] Denton was responsible for all Madison Guaranty loans.[625] Denton said Madison Guaranty was acquiring deposits (liabilities) much faster than it was lending them (assets). McDougal hired him to increase the number of Madison Guaranty commercial loans.[626]

Seth Ward was one of Denton's close friends and a customer at Union National. Ward "was known in the business community," Don Denton said.[627] "He had been successful. He was recognized as a business player and also happened to have a . . . real estate broker's license."[628] Denton thought Ward would be a valuable asset to Madison Guaranty because of his experience

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[624] Denton 8/20/96 GJ at 4; Denton 8/19/94 FDIC-OIG Aff. at 2.

[625] Latham 3/28/95 GJ at 15.

[626] Denton 8/20/96 GJ at 12. In simple terms, an increase in the number of loans made by a financial institution increases its assets, because the loans are viewed as collectible assets (whereas deposits are, conversely, obligations to repay and thus, debts). All other things being equal, an increase in assets will result in an increase in net worth.

[627] Denton 8/20/96 GJ at 12.

[628] Id. Denton later remembered that Hubbell "served as Seth Ward's legal counsel on most, if not all, of his business arrangements." Id. at 15. Denton said of perhaps 50 business deals he was involved in with Seth Ward, dating back to 1975, Hubbell had provided legal advice to Ward in all 50. Id. at 15. When Ward first began his work at Madison Guaranty, he spoke with Webb Hubbell about it, and both went to Madison Guaranty's offices to meet Jim McDougal. Hubbell 8/22/96 GJ at 64, 75-76. Hubbell later described Ward's work for Madison Guaranty: "He was supposed to locate property and put McDougal together -- I use 'McDougal' as the savings and loan -- put McDougal together with the purchaser and help develop parcels of property, similar to his Maple Creek Farm property." Id. at 75.

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and contacts in the local business community. Denton put Ward in touch with Jim McDougal in mid-1985, and McDougal hired Ward almost immediately.[629] Madison Guaranty's service corporation, Madison Financial, employed Ward and paid him a yearly salary of $25,000 plus commissions on land sales.[630] Ward did public relations work and looked for land to develop,[631] but kept only sporadic office hours.[632]

b. Ward Began Work on the IDC Purchase.

Soon after Ward started at Madison Financial, Jim McDougal told him he was interested in purchasing landlocked property from International Paper Company, north of the Maple Creek Farm development. McDougal wanted Ward to help obtain an easement to the property.[633]

Ward approached Everett Tucker, president of the Industrial Development Corporation ("IDC"), which owned adjacent property just north of the International Paper land, about selling

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[629] Id. at 11-12. See Letter from James B. McDougal, President, Madison Guaranty, to Seth Ward (May 5, 1985) (Doc. No. 396-00000482) (about Ward's "remuneration relating to [Ward's] employment by Madison Guaranty Financial Corporation" and advising Ward of Madison Guaranty's "expectations in the matter of transportation").

[630] Denton 8/20/96 GJ at 16; Ward 11/29/94 GJ at 7.

[631] Denton 8/20/96 GJ at 12-13 (A. "[I]t was my understanding that he would be doing public relations work and looking for and developing real estate." Q. Did he do that? A. Yes"); Latham 3/28/95 GJ at 31-32; Hubbell 8/22/96 GJ at 75-76.

[632] Denton said although Ward worked at Madison Financial, "[h]e certainly was not there regularly. He didn't come in at 8 and leave at 5. But he would be in and out. Some days, some weeks, he may not be there at all. I'd say his hours were unusual." Denton 8/20/96 GJ at 14. "I didn't want to punch a clock," Ward later testified. Ward 11/29/94 GJ at 7. "So I agreed, provided I could come and go as I pleased." Id.

[633] Ward 1/17/96 GJ at 13-14; Ward 2/12/96 Senate Whitewater Comm. Depo at 10-11; J. McDougal 8/96-6/97 Int. at 17.

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Madison Financial an easement.[634] Tucker declined, but said he would sell the entire 1,050-acre IDC parcel for $3.5 million.[635]

McDougal said a $3.5 million deal was too large for Madison Financial.[636] But IDC was under pressure from its lenders to sell the property[637] because IDC had not been successful developing the land as an industrial park causing loans on the property to default.[638] IDC reduced its asking price by late July 1985 to $1.75 million.[639]

Though McDougal was interested in purchasing the IDC property at this price, Madison Financial did not have sufficient funds to finance the entire $1.75 million purchase.[640] More prohibitive was a state regulation limiting the investment that Madison Guaranty could make in its service corporation to six percent of its assets.[641] Because Madison Guaranty was already

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[634] Ward 1/17/96 GJ at 14.

[635] Id.; Ward 2/12/96 Senate Whitewater Comm. Depo at 9-11, 27; Handwritten listing of all real and personal property owned by IDC including but not limited to the IDC property (Doc. No. 396-00000482).

[636] Ward 1/17/96 GJ at 14; Ward 2/12/96 Senate Whitewater Comm. Depo at 12-13, 36.

[637] Denton 8/20/96 GJ at 16-20.

[638] Cook 7/19/96 Int.; Dover 7/18/96 Int; see also Denton 8/20/96 GJ at 22 ("it was generally known around town that IDC, Industrial Development Company, was heavily indebted to the three largest Little Rock banks and that the loans were non-performing").

[639] Memo from Charles Cook, First Communication Bank, to Gordon Parker, spokesperson, First Commercial Bank, Bob Wilson, Union National Bank, and Robert Taylor, President, Boatmen's Bank (July 30, 1985) (Doc. No. 2035-00000038).

[640] J. McDougal 4/2/97 GJ at 84-87. Don Denton later remembered that Madison Financial became interested in the IDC property "because it was dirt cheap. It was close to town and it had a water and sewer system already in place." Denton 8/20/96 GJ at 20.

[641] J. McDougal 8/96-6/97 Int. at 17; Denton 8/20/96 GJ at 10; J. McDougal 4/2/97 GJ at 87.

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close to this six percent limit, Madison Guaranty could not lend Madison Financial the entire purchase price.[642]

c. Negotiations between McDougal and Ward: Ward Agreed to Take Title to Part of the IDC Property.

i. Ward and McDougal Agreed That Ward Would "Purchase" Part of the IDC Property with No Risk to Himself.

To circumvent the six percent limit, McDougal and Ward agreed that Ward would personally take title to all of the IDC property north of 145th Street.[643] Although the six percent limit restricted amounts Madison Guaranty could lend Madison Financial, that limitation did not apply to a private party such as Ward. Ward and his accountant, Mike Schaufele, met with McDougal in late August 1985 to discuss the terms.[644] Ward was concerned about the tax

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[642] J. McDougal 8/96-6/97 Int. at 17; Tr. at 96, Ward v. Madison Guaranty, No. 87-7580 (E.D. Ark.) (testimony of Latham) (Doc. Nos. 341-00004128 through 4129).

[643] Memo from Jim McDougal to Seth Ward (Sept. 3, 1985) (Doc. No. 396-00001130); J. McDougal 4/2/97 GJ at 87-88. Schaufele 1/30/96 GJ at 14 ("[Seth Ward] explained to me that it was his understanding that the bank could only own so much real estate and -- or one of its subsidiaries could only own so much real estate. And therefore, when they bought this property, which they were buying from the IDC, that it was more than they could acquire in their name, in the bank's name. And so therefore, Mr. Ward was buying part of it. And then as they could acquire it, based upon their regulations, which I'm not familiar with, they were going to acquire it back from Mr. Ward"); see also Denton 8/20/96 GJ at 26-27.

[644] Schaufele 5/27/88 Depo. at 5, Ward v. Madison Guaranty, No. 87-7580 (E.D. Ark.); Ward 8/30/88 Depo. at 128-30, Ward v. Madison Guaranty, No. 87-7580 (E.D. Ark.) (Doc. Nos. 341-00004039 through 4041); Schaufele 1/30/96 GJ at 9. As discussed later, the September 3, 1985 memo memorializing the meeting refers to "our conversation of last Friday . . . ." This would establish the exact date of the meeting as Friday, August 30, 1985. This is also consistent with Schaufele's testimony the meeting was around Jim McDougal's birthday, which is August 25; see also Ward 2/12/96 Senate Whitewater Comm. Depo at 91 (indicating that Schaufele was Ward's accountant "at that time" in 1985 and 1986).

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implications.[645] They agreed Madison Guaranty would lend Ward the entire amount of the purchase price on a nonrecourse basis.[646] If Ward did not repay the loan, Ward had no personal liability if selling the land did not bring enough money to pay off the loan.[647] Ward agreed the nonrecourse financing was a good deal: "Now, I'll be honest with you, somebody offers me a non-recourse note, I'm not going to try to make them change their mind."[648] When Ward was asked why Madison Guaranty had him purchase the property north of 145th Street when Madison Guaranty financed the purchase at 100 percent, Ward answered, "I do not know."[649] Denton said Ward wanted no risk in the deal.[650] Madison Guaranty accommodated Seth Ward's wish: Ward put up no money, and made no down payment, and the non-recourse loan meant that Madison Guaranty could not recover from him if Ward made no payments.[651]

Ward granted Madison Financial an option lasting up to 270 days to purchase the IDC

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[645] Hubbell 8/22/96 GJ at 90.

[646] Denton 8/20/96 GJ at 28-29; Hubbell 8/22/96 GJ at 79-82.

[647] Denton 8/20/96 GJ at 28-29 ("Madison [Guaranty] let Ward buy the note, buy the property, gave him the $1.15 million to do it and said, we won't hold you personally liable. The only thing we'll do is we'll take the land back if you fail to pay").

[648] Ward 2/12/96 Senate Whitewater Comm. Depo. at 33.

[649] Id. at 113.

[650] Denton 8/20/96 GJ at 28-29, 33. Ward claimed that he "offered to" put up money for the IDC transaction, but that McDougal refused because "it was such a good deal." Ward 2/12/96 Senate Whitewater Comm. Depo. at 111; see also Ward 2/12/96 Senate Whitewater Comm. Depo at 117 (indicating that McDougal offered Ward a nonrecourse note because the IDC purchase was "such a good deal").

[651] Denton 8/20/96 GJ at 29. "His purchase price was $1,150,000, and Madison [Guaranty] loaned him $1,150,000." Denton 8/20/96 GJ at 29. Ward later said he had not planned on being without risk, but the offer was too good to pass up. Ward 2/12/96 Senate Whitewater Comm. Depo at 112.

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property from him for the amount of the non-recourse loan plus all accrued interest.[652] This allowed Madison Financial to "purchase" portions of Ward's property as needed to sell them to third parties. The property remained in Ward's name until Madison Financial sold it to someone else.[653]

Madison Financial agreed to reimburse Seth Ward for any additional taxes he may have had to pay by virtue of his holding the property[654] and also agreed to handle all administrative duties associated with the property such as collecting rents.[655] In return for "warehousing" the property for Madison Financial, Ward was entitled to receive commissions on subsequent sales of the property to third parties -- even if he had nothing to do with arranging sales.[656] Mike Schaufele, Ward's accountant, said the transaction was unusual, because Ward had no risk.[657] Ward's significant compensation with no risk or responsibility led the FDIC and others to

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[652] Memo from Jim McDougal to Seth Ward (Sept. 3, 1985) (Doc. No. 396-00001130); Letter from Seth Ward to Jim McDougal at 1 (Sept. 24, 1985) (Doc. Nos. 99-00035000 through 35001).

[653] The option was also significant because it was inconsistent with Madison Financial's eventual "purchase" of a second option from Ward. As discussed below, in May 1986, Mrs. Clinton drafted another option agreement between Ward and Madison Financial that was used to deceive the bank regulators. That agreement gave Madison Financial an option to purchase certain land for $400,000. That same land was already subject to the first option agreement discussed in text, which, as of May 1986, allowed Madison Financial to purchase the land for $70,000.

[654] Denton 8/20/96 GJ at 33-34.

[655] Id. at 34.

[656] Id. at 54-55.

[657] Schaufele 1/30/96 GJ at 13; see also Denton 8/20/96 GJ at 28 ("Mr. Ward had no risk").

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characterize Ward as a "straw man" or "nominee" purchaser.[658] Ward did not have to do anything to earn his "commissions" and he had none of the traditional indicia of ownership of the property such as responsibility for taxes and collecting rents.

ii. The Incomplete September 3, 1985 Memorandum.

Seth Ward and Jim McDougal, for Madison Financial, tried to memorialize their agreement in a September 3, 1985 memorandum from McDougal to Ward:

> The following is a summary of our conversation of last Friday [August 30, 1985]:
>
> 1. You will purchase all land north of 145th Street and the utility plants for $1,150,000.
>
> 2. Madison Guaranty will take an option for 270 days to purchase those properties for $1,187,000 . . . . If any tax consequences should arise for you from the transaction, Madison Guaranty will pay those taxes.
>
> 3. You will have the present IDC manager collect the rent and utility payments and forward the net proceeds monthly to Greg Young here. Greg will then apply this monthly income to the accruing interest on your loan.
>
> 4. Madison Guaranty will provide you with a letter requiring that you drive a prestigious automobile while you are in charge of this project.[659]

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[658] See FDIC-OIG Supplemental Report on Rose Law Firm Conflicts of Interest, WA-94-0016 at ii-vi (Sept. 20, 1996); Report on Crimes arising from the Castle Grande transactions from William K. Black to Independent Counsel's Office at 2-4 (Sept. 4, 1998).

[659] Memo from Jim McDougal, President Madison Guaranty to Seth Ward (Sept. 3, 1985) (Doc. No. 341-00004360). The September 3, 1985 memorandum addressed tax concerns expressed by Ward and Schaufele in their meeting with McDougal but the memorandum failed to address the amount of financial compensation owed to Ward, so the memorandum was not a full recital of the terms of the agreement. See, e.g., Latham 8/20/96 GJ at 14-15 (discussing the September 3, 1985 memo and indicating that it summarized "[i]n general" John Latham's understanding of Ward's agreement with McDougal).

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iii. The Unexecuted September 23, 1985 Letter.

Ward and McDougal drafted additional documents detailing other terms of their agreement. With Hubbell's help, Ward drafted a letter dated September 23, 1985, explaining the compensation due Ward:

> I have agreed to take title to all of the assets and property north of 145th Street, the water and sewer improvements, and for the water and sewage treatment ponds south of 145th Street. Madison Guaranty Savings & Loan Association will agree to lend me on a non-recourse basis the purchase price secured only by a mortgage of those parcels and the sewer and waterworks.
>
> Madison Guaranty will have an option for at least 270 days to purchase the property from me at any time for the amount of the note plus all accrued interest. It is the intention of both Madison and myself to attempt to develop the property and sell it as quickly as possible. If there is any purchase of the property or any portion thereof during the 270-day period, the purchase price must be approved by me and Madison Guaranty. The proceeds of any sale will be applied toward the promissory note, less a ten percent commission to be paid to me, if the property is sold by me. If it is sold by anyone else, then the proceeds will go to Madison Guaranty, less the commission to the other seller, and a four percent commission to me.
>
> . . . .
>
> [O]n all property sold either by me or by Madison Guaranty after the exercise of Madison's option, I shall receive a ten percent commission on said property, if it is sold by me, and a four percent commission if it is sold by anyone else.[660]

The parties never executed this letter.

The letter's terms conformed to Jim McDougal's recollection of his agreement with Seth Ward.[661] In addition, the drafting of the letter reflects Webb Hubbell's involvement in this

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[660] Letter from Seth Ward to Jim McDougal at 1 (Sept. 23, 1985).

[661] J. McDougal 8/96-6/97 Int. at 19.

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transaction. Martha Patton, Hubbell's secretary, typed the September 23, 1985 draft letter at Hubbell's direction.[662] Hubbell said generally Ward would show him the letters Hubbell's secretary typed for him before they were mailed and Ward would not mail them if Hubbell disapproved of their language.[663] Hubbell also acknowledged that he and Ward discussed the terms of Ward's employment with Madison Financial.[664]

iv. The Original September 24, 1985 Agreement.

The September 23, 1985 letter was never executed; rather, the parties executed a second letter dated September 24, 1985,[665] typed by Sue Strayhorn, McDougal's secretary.[666] Eventually in July 1986, Ward and McDougal would execute a second agreement backdated to September

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[662] Patton 3/17/98 GJ at 13-14 (indicating in reference to Seth Ward's IDC/Castle Grande letter agreements and correspondence with Madison Guaranty and Madison Financial that "I can say with certainty that I typed those letters" and that "I would have gotten that [information that went into the letter] from Webb Hubbell"). Martha Patton's testimony contradicted Hubbell. She said she typed Ward's IDC/Castle Grande letters and other documents from information she received from Hubbell, not Ward, and she had no memory of ever typing Ward's notes. Additionally, she said she did not recognize Seth Ward's handwriting. Id.

[663] Hubbell 8/22/96 GJ at 44. Seth Ward claimed that Hubbell did not participate in the drafting of Ward's IDC/Castle Grande documents, including the September 23, 1985 draft. Ward 2/12/96 Senate Whitewater Comm. Depo. at 18-19. Both Patton and Hubbell contradicted Ward's testimony. The documentary evidence also contradicted Ward's testimony.

[664] Hubbell 8/22/96 GJ at 76-77. Hubbell said he would have told Seth Ward to have a written employment contract -- "to get it in writing" -- but that he did not remember providing that advice. Id. at 76.

[665] Letter from Seth Ward to Jim McDougal (Sept. 24, 1985) (Doc. Nos. 396-00000698 through 699).

[666] The letter had Strayhorn's "ss" initials at the bottom, and Seth Ward said Sue Strayhorn "wrote the agreement." Ward 2/12/96 Senate Whitewater Comm. Depo. at 19-20.

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24, 1985,[667] which had materially different terms. That backdated agreement, and Ward's subsequent suit against Madison Guaranty based upon it, is discussed below. The original September 24, 1985 agreement from Ward to McDougal said:

> Dear Jim:
>
> This letter is to set forth our agreement concerning the property commonly referred to as all the land owned by the Industrial Development Company of Little Rock.
>
> On or about the 13th day of September, 1985, Madison Guaranty Savings & Loan Association agreed to acquire all of Industrial Development Company of Little Rock's property except the Timex building. In the agreement, Madison has the right to assign its rights to that agreement to any entity or individual. As part of our agreement, I have agreed to take title to all of the assets and property north of 145th Street, the water and sewer improvements, and the water and sewage treatment ponds south of 145th Street. Madison Guaranty Savings & Loan Association will agree to lend me on a non-recourse basis the purchase price secured only by a mortgage of those parcels and the sewer and waterworks.
>
> Madison Guaranty will have an option for at least 270 days to purchase the property from me at any time for the amount of the note plus all accrued interest. It is the intention of both Madison Guaranty and myself to attempt to develop all of the property acquired from I.D.C., and sell it as quickly as possible. If there is any purchase of the property or any portion thereof during the 270-day period, the sale price will be mutually approved by me and Madison Financial Corporation. The proceeds of any sale will be applied toward the promissory note, less a ten percent commission to be paid to me if the property is sold by me, or at Madison's discretion, the particular piece of property may be deeded back to Madison prior to the execution of the sales transaction. If it is sold by anyone else, then the proceeds will go to Madison Guaranty, less the commission to the other seller, and a four percent commission to me.

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[667] In 1986, with regulators likely to question the Ward-Castle Grande transactions, Don Denton and Seth Ward created a document intended to disguise Madison Guaranty's right under original agreements to buy all of the IDC property originally titled to Ward. The disguise would only work if they created a document backdated to appear as if it had been agreed to by Ward and Madison Guaranty on September 24, 1985, which is what they did.

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It is also agreed, in addition to the salary I am receiving from Madison Guaranty, on all property acquired from I.D.C. sold either by me or by Madison Guaranty after the exercise of Madison's option, or on that portion of the property already acquired by Madison from I.D.C., I shall receive a ten percent commission on said sale if it is sold by me, and four percent commission if it is sold by anyone else.

During the term of the option period, all of the net revenues of the waterworks and sewer department shall be forwarded directly to Madison Guaranty for application toward the note.

I would appreciate your acknowledging and agreeing to the terms of this letter agreement.

Sincerely,
/s/ Seth Ward

SW:ss

Acknowledged and accepted:

/s/ Jim McDougal
Jim McDougal, President
Madison Financial Corporation[668]

Thus, Ward and McDougal agreed that:

- Seth Ward would take title to some of the property owned by IDC;
- Madison Guaranty would lend Seth Ward the purchase price on a non-recourse basis;
- Madison Financial would have an option for at least 270 days to purchase the IDC property from Seth Ward at any time for the amount of the non-recourse loan plus all accrued interest; and
- Seth Ward would receive payment of "commissions" from Madison Financial when the IDC property was resold.

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[668] Letter from Seth Ward to Jim McDougal (Sept. 24, 1985) (Doc. Nos. 99-00035000-01).

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McDougal later said he thought the letter was Hubbell's idea.[669]

d. Rose's Work and Negotiations between Madison Financial and IDC.

As soon as Jim McDougal indicated interest in the IDC property at the $1.75 million price, negotiations began between Madison Financial (represented by Seth Ward) and IDC on the specific terms of the deal. Attorneys from Rose represented Madison Financial (and Seth Ward) in the purchase.

i. Webster Hubbell Opened a New Matter at Rose.

Substantial evidence showed that Webster Hubbell was involved in Rose's representation of Madison Guaranty in the acquisition of the IDC property from the beginning. On August 2, 1985, a New Client Master Form was circulated at Rose.[670] The form listed the matter as "I.D.C." and the originating attorney as Hubbell.[671] The August 5, 1985 Rose Law Firm Daily Brief, a

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[669] McDougal also said the size of the "c" in McDougal's signature on the letter led him to think he was in a manic condition when he initialed the document, and had no specific recollection of it. J. McDougal 8/1/96-6/9/97 at 19.

[670] Rose New Client Master Form, (Aug. 2, 1985) (Doc. No. 105-00008017). This was the fifth "matter" opened by Rose for Madison Guaranty. Matter 1 was "Preferred Stock Offerings," Matter 2 was "Broker-Dealer," Matter 3 was "Bibler Golden," and Matter 4 was titled "General." Mrs. Clinton was the billing partner on all of these matters.

[671] Hubbell later claimed the New Client Master Form might have been mistakenly filled out by a Rose employee who assumed Hubbell was responsible attorney because the matter involved Seth Ward. Hubbell 8/22/96 GJ at 47. Hubbell's explanation was inconsistent with the form's contents, which listed Madison Guaranty as the client, not Ward. Anyone who assumed Hubbell was the responsible attorney would have to have known this particular Madison Guaranty matter also involved Ward. Additionally, Martha Patton, then Hubbell's secretary, said handwriting on the form was hers and that she would have received information for completing the form from Hubbell. Patton 9/26/96 Int. at 2. Denton also said Hubbell represented Ward in the IDC transaction. Denton 8/20/96 GJ at 77. Jim McDougal said Webb Hubbell was Seth

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daily internal firm memorandum, also listed Hubbell as responsible attorney for a new matter entitled "I.D.C."[672]

Seth Ward's accountant, Mike Schaufele, testified in 1988 that he spoke with Hubbell about the IDC/Castle Grande transactions when they were being done:

> Q. Have you had any discussions with anyone other than Seth Ward concerning Mr. Ward's commissions?
>
> A. At the time of the original transaction, I discussed it with Mr. Ward's attorney, Web[b] Hubbell.[673]

But, in 1996, Schaufele claimed Hubbell did not represent Ward in the original purchase of the IDC property and Schaufele had not discussed the transactions with him:

> Q. Who generally represented Mr. Ward in his previous land deals?
>
> A. His son-in-law, Webb Hubbell.
>
> Q. And do you know if he -- he, Mr. Hubbell -- represented Mr. Ward in this transaction?
>
> A. He didn't. I do know that after the meeting with Mr. McDougal [in late August 1985] we placed a call to Webb to talk about this. And Webb informed us that because the firm was representing Madison Guaranty, that he could not represent Mr. Ward and Mr. Ward needed to find other

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Ward's attorney on the IDC/Castle Grande matter. J. McDougal 4/3/97 GJ at 39-40.

[672] Rose Daily Briefs (Aug. 5, 1985) (Doc. No. 105-00008015). Hubbell never billed any time to any of the Madison Guaranty matters handled by Rose. Hubbell's name does appear twice on the billing records. On November 20, 1985, Mrs. Clinton billed Madison Guaranty Matter 4 ("General") 1 hour for "Conference with Seth Ward; conference with W. Hubbell." Rose Billing Records (Jan. 21, 1986) (Doc. No. DEK015014). On November 26, 1985 Clinton billed Madison Guaranty Matter 1 ("Stock Offering") 1 hour for "Conference with S. Ward; conference with T. Thrash; conference with W. Hubbell." Rose Billing Records (Jan. 21, 1986) (Doc. No. DEK015009).

[673] Schaufele 5/27/88 Depo. at 13, Ward v. Madison Guaranty, No. 87-7580 (E.D. Ark.).

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counsel.

Q. And that conversation with Mr. Hubbell, was it about contemporaneous with the date of the meeting that you and Mr. Ward had with Mr. McDougal, the first meeting?

A. I think it was -- actually, I really do think it was that afternoon.[674]

Hubbell corroborated Schaufele's original, not revised, version:

Q. You note in here that he [Schaufele] has identified you as Mr. Ward's attorney.

A. Right.

Q. Were you Mr. Ward's attorney?

A. I think everybody thought I was Mr. Ward's attorney, including me, yes.

Q. At the time of the original transaction that is the cause -- or was the basis of Mr. Ward's commissions, did you give legal advice to your father-in-law?

A. I think under your definition of "legal advice," absolutely.[675]

Martha Patton, Hubbell's secretary at Rose in 1985 and 1986, said Hubbell represented Ward "on matters that related to Madison Guaranty Savings & Loan Association," although she

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[674] Schaufele 1/30/96 GJ at 16.

[675] Hubbell 8/22/96 GJ at 40. Hubbell's reference to "your definition of 'legal advice'" referred to the questioner's earlier statement:

> But for my purposes, when I ask you, did you perform legal services, I don't mean were you his lawyer, meaning the only lawyer Seth Ward had and the only lawyer that gave advice to Seth Ward on a particular issue. I am asking you a question I'd like you to answer as to whether you performed any legal services, gave him any legal advice with regard to that matter, whether you billed or not, okay?

Id. at 29.

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"could not recall any special issues related to Madison [Guaranty]."[676] Patton also remembered that Ward visited Hubbell frequently at Rose during the IDC/Castle Grande transactions, sometimes as often as five times a week.[677] Hubbell acknowledged that he represented Seth Ward in most of his transactions in 1985 and 1986, including real estate transactions.[678] "But I didn't consider myself as his lawyer," Hubbell later claimed.[679] "[B]ut I was more of his son-in-law who was a lawyer, who he used a lot for free legal advice."[680]

ii. Rose Law Firm Attorneys Began Work on the IDC Matter.

The first time Rose billed on the IDC matter was August 6, 1985, when Rose attorney Tom Thrash billed for "Review contract for sale."[681] In the next weeks, Thrash and Rose attorney R. Davis Thomas billed for numerous telephone conferences with Seth Ward and IDC attorney Darrell Dover, as well as tasks like "make changes in documents," "review changes in agreement," "attend IDC Board meeting," and "prepare corporate resolutions."[682] The parties exchanged numerous drafts of a purchase agreement, which was signed on September 13, 1985.[683] Both the draft (September 23, 1985) agreement between Ward and McDougal and the

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[676] Patton 3/17/98 GJ at 5.

[677] Patton 3/17/98 GJ at 8.

[678] Hubbell 8/22/96 GJ at 27.

[679] Id. at 29.

[680] Id.

[681] Rose Billing Records (Nov. 20, 1985) (Doc. No. DEK014986).

[682] Rose Billing Records (Nov. 20, 1985, Dec. 5, 1985 and Nov. 12, 1985) (Doc. Nos. DEK014986, DEK015004, and DEK015007).

[683] Draft purchase agreements by and between Madison Financial and IDC (undated) (Doc. Nos. 2035-00000071 through 77 and 2040-00000442 through 448); Signed purchase

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original (September 24, 1985) agreement refer to that September 13, 1985 purchase agreement.[684]

One specific change to the purchase agreement requested by Rose attorneys was to the definition of "Madison Financial Corporation." IDC's original draft defined the purchasing entity as Madison Financial, including "any of its affiliates to whom Madison might elect to assign its rights hereunder."[685] Rose attorneys changed the language to define Madison Financial as "any entity or individual to whom Madison might elect to assign its rights hereunder."[686] This enabled Madison Financial to assign its rights to over half the property to Ward, which it did on September 13, 1985, the same day it signed the purchase agreement with IDC.[687] Don Denton, whose signature appeared on the assignment, said it "was executed some time after the closing in

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agreement by and between Madison Financial and IDC (Sept. 13, 1985) (Doc. Nos. KI-00000001 through 6); see also Denton 8/20/96 GJ at 31 (indicating the purchase agreement was signed about September 13, 1985).

[684] There was an error in the September 23, 1985 draft, which said the date as the "13th day of December, 1985." Letter from Seth Ward to Jim McDougal (Sept. 23, 1985). The original September 24, 1985 agreement stated the correct month. Letter from Seth Ward to Jim McDougal (Sept. 24, 1985) (Doc. Nos. 99-00035000 through 35001).

[685] Draft purchase agreement between Madison Financial and IDC (undated) (Doc. No. 2040-00000442).

[686] Signed purchase agreement by and between Madison Financial and IDC (Sept. 13, 1985) (Doc. Nos. KI-00000001 through 6).

[687] Assignment from John Latham, Madison Financial, to Seth Ward, Madison Guaranty employee (Sept. 13, 1985) (Doc. No. 99-00042705 and FDICHRC 0081). Madison Financial specifically assigned to Ward all land north of 145th Street including the sewer and water utilities. Ward was assigned all property lying north of 145th Street with the exception of a small 6.6-acre parcel leased by Levi Strauss and eventually purchased by Davis Fitzhugh. Assignment from John Latham, Madison Financial, to Seth Ward (Sept. 13, 1985) (Doc. Nos. 99-00042705 and FDICHRC 0081); see also Denton 8/20/96 GJ at 31 (discussing the assignment); and J. McDougal 4/2/97 GJ at 90 (discussing the Levi Strauss warehouse).

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October [of 1985]."[688]

iii. Sale of the IDC Property to Madison Financial and Ward Closed.

Sale of the IDC property, "the largest purchase that Madison ever made,"[689] closed on October 4, 1985.[690] Madison Financial paid $600,000 of the purchase price and took title to the part of the property located south of 145th Street. Ward paid $1.15 million for the portion of the property assigned to his name, disbursed in two checks: approximately $750,000 for the land north of 145th Street and $400,000 for the sewer and water utilities.[691] Madison Guaranty loaned Ward the entire amount with a $1.15 million nonrecourse loan.[692]

Although the proceeds of the loan to Ward were paid on October 4, the day of the closing,

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[688] Denton 8/20/96 GJ at 32.

[689] Id. at 35.

[690] Id. at 25.

[691] Check Nos. 160574 and 160575 from the account of Beach Abstract & Guaranty Co. signature illegible payable to First Commercial Bank, N. A. for $400,000 and $750,000 (Oct. 4, 1985) (Doc. Nos. 99-00042794 and 99-00042796); see also Beach Abstract invoice to Mr. Don Denton, Madison Guaranty Savings & Loan for a recording fee of $438.08 (undated) (Doc. No. 396-00000252); see also Check Nos. 4575, 4577, and 4673 from the account of Madison Guaranty Savings & Loan Association signature illegible payable to Beach Abstract Company for $398,106.93, $748,844.93, and $438.08 (Oct. 4, 1985 and Oct. 18, 1995) (Doc. Nos. 396-00000252 through 255).

[692] Copies of the $1.15 million loan from Madison Guaranty to Seth Ward (Oct. 15,1 985) (Doc. Nos. 396-00000248 through 251). John Latham approved the loan. Latham 8/20/96 GJ at 19-20. Funds were disbursed to Ward on the day of the closing (October 4, 1985), but the loan documentation (including Ward's note evidencing the loan) bore the date October 15, 1985, eleven days after closing. Madison Guaranty Savings & Loan Assn. Loan No. 2962-50 for $1,150,000 (Oct. 14, 1986) (Doc. No. 105-00046395); Loan Documentation from Madison Guaranty to Seth Ward (Oct. 15, 1985) (Doc. Nos. 396-00000248 through 251). Consistent with Ward's status as a nominee for Madison Guaranty, Ward received the proceeds of his loan before he filled out a loan application.

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the loan documents were not prepared for 11 days thereafter. Don Denton had the October 15, 1985 note prepared at the direction of Jim McDougal and John Latham.[693] Denton said Webster Hubbell authored the nonrecourse language on Ward's $1.15 million note on a plain 8 1/2" x 11" piece of paper. [694] Hubbell later stated that he did not "recognize that language at all as being anything I drafted or advised [Ward] on."[695]

3. October 1985 - February 1986: The IDC Property Is Developed and Sold to Insiders.

a. Development of the Property -- Initial Sales to Insiders.

After the October 4, 1985 purchase of the IDC property, Madison Financial began developing it. Jim McDougal was the primary person involved in this effort. Ward was involved

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[693] Denton 8/20/96 GJ at 35; see also Ward 2/12/96 Senate Whitewater Comm. Depo. at 90 (indicating that Denton "handled the notes on all of" Ward's Madison Guaranty loans).

[694] Denton 8/20/96 GJ at 37. In contrast, Denton had said in 1994:

> In response to the issue of Webb Hubbell's involvement in Seth Ward's business dealings, I know from my friendship with Ward that Hubbell is his son-in-law. I know that because of their relationship and my observations, that Ward discusses his business dealings with Hubbell, and I recall discussing Ward's financing with Hubbell when I worked at Union National Bank. In particular, I understand that it was reported in the Washington Post that I purportedly said Hubbell drafted the language on the $1.15 million loan from Madison to Ward used to finance the Castle Grande deal. I have no personal knowledge of Hubbell drafting any such language, although the language on the promissory note was not the standard language I used at Madison. Further, based on my familiarity with Ward's writing through the years I have dealt with him, I do not believe Seth Ward drafted the language in this note. I have no person[al] recollection of where the language came from that was used on this note and I do not know who authored that language.

Denton 8/19/94 FDIC-OIG Aff. at 3.

[695] Hubbell 8/22/96 GJ at 84-85.

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in the development in a more limited way. This development included a series of quick sales of parcels to Madison Guaranty insiders, efforts to develop the property south of 145th Street, and the sale of the property north of 145th Street and the utilities. The property became known as the 145th Street property or "Castle Grande,"[696] apparently derived from the name of the company that was to provide mobile homes for a proposed residential community to be the development's centerpiece, called "Castle Grande Estates."

In October and November 1985, Madison Financial sold portions of the property to employees or other Madison Guaranty-related parties. These insider sales falsely inflated Madison Financial's profits, relieving some of Madison Guaranty's financial burden.[697] Typically, Madison Guaranty fully financed the subsequent sales of the Castle Grande property, and the down payments often came from proceeds of loans or commissions paid by Madison Financial. Because arbitrarily low cost allocations were used in calculating the cost of sales, these transactions generated $1,451,000 in inflated profits for Madison Financial.[698]

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[696] Denton 8/20/96 GJ at 36. Seth Ward said Jim McDougal renamed only some of the IDC property "Castle Grande." Ward 2/12/96 Senate Whitewater Comm. Depo. at 9.

[697] Madison Guaranty was criticized in a 1984 Supervisory Agreement for inadequate capitalization. Federal regulations required Madison Guaranty to maintain a certain net worth to protect the safety of its deposits. See 12 CFR 563.13 (1981). Cf. Latham 8/20/96 GJ at 6-7 (discussing the 1984 Supervisory Agreement).

[698] When the FHLBB exam began in March 1986, the federal examiners quickly discovered the profits were improper. Interim Report of James Clark at 2 (Apr. 2, 1986) (Doc. No. 99-00038847):

> recognition of this income does not appear to be valid. The portion of project costs allocated to these sales is very low and does not appear to reflect the true cost of real estate sold. As a result of the low cost, high profits have been recognized.

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i. Jim Guy Tucker.

On October 25, 1985, Jim Guy Tucker, a long-time friend, lawyer, and business partner of Jim McDougal, purchased a thirty-four acre parcel of undeveloped land, located at the extreme west side of Castle Grande, from Madison Financial for $125,000. But Madison Guaranty lent Tucker $260,000[699] in two checks: one sent to Tucker for $135,000, and one to Madison Financial for $125,000. Madison Guaranty's internal documents reflect that the $135,000 of loan proceeds over the purchase price was to be used for property improvements, but there was no loan application to support this.[700] Madison Financial claimed a paper profit on the sale of $93,620.00.[701] Tucker eventually repaid this loan to the RTC in 1992 through his attorney, John

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See also id. at 3 (Doc. No. 99-00038895):

> Greg Young stated that James McDougal told him to use a [cost] basis of $1,000 per acre for the land purchases by Madison Financial. Greg Young stated that McDougal did not have any documented support for this amount, but that it was calculated in McDougal's head.

Id. at 11 (Doc. No. 99-00038874):

> Sales of the large parcels in Castle Grande have resulted in the recognition of $1,451,000 of fictitious income by Madison Guaranty and Madison Financial, thus inflating net worth by this amount. This income was recognized despite the fact that almost all sales were to affiliated persons and were fully financed by Madison Guaranty.

[699] This was purchase money mortgage loan no. 3004. See J. McDougal 4/2/97 GJ at 89-90 (indicating that Tucker bought the 34 acre parcel "[r]ight by the freeway exit there, this lower half" and that Madison Guaranty loaned Tucker the money to buy the property).

[700] Tucker used the $135,000 excess proceeds of the loan to repay a loan for Irene Garner, of which he was a guarantor. Patkus 7/19/95 GJ at 9-11.

[701] Federal Home Loan Bank Board Report of Examination ("as of" date Mar. 4, 1986) (Doc. No. 99-00038823).

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Haley, and a corporation called Ikansa Realty.[702]

ii. Davis Fitzhugh.

On October 25, 1985, Davis Fitzhugh purchased (the Levi Strauss warehouse) from Madison Financial for $525,000.[703] Fitzhugh was a salesman for Madison Financial, earning a ten percent commission, so Madison Financial paid Fitzhugh $50,000 in commissions for selling to himself. Fitzhugh made his "down payment" by signing over his commission check.[704] Madison Financial claimed $389,000.00 in paper profit on the sale.[705] In 1990, John Latham pleaded guilty to falsifying Madison Guaranty's records for this loan.[706]

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[702] This loan was the subject of RTC Crim. Ref. No. 190, dated September 24, 1993, and was listed as one of the overt acts in Count 1 of the indictment returned in the 1996 trial and conviction of Jim McDougal, Susan McDougal, and Jim Guy Tucker. Jim McDougal and Tucker were convicted on the conspiracy count focusing on this loan. This loan was also referenced in Counts 20 and 21 on which Tucker was acquitted. Verdict at 25-26, United States v. McDougal, Tucker, McDougal, No. LR-CR-95-173 (E.D. Ark May 28, 1996).

[703] This transaction was one of the subjects of the 1989 indictment of Jim McDougal, from which he was acquitted after a jury trial in 1990. See Indictment at 1-3, United States v. McDougal, et. al., No. LR-CR-89-161 (E.D. Ark. Nov. 20, 1989); see also J. McDougal 4/2/97 GJ at 90 (indicating the Levi Strauss warehouse "was sold for $550,000, I believe").

[704] Federal Home Loan Bank Board Report of Examination (Mar. 4, 1986) (Doc. No. 99-00038824).

[705] The cost basis used was only $61,000.00. Greg Young said James McDougal told him to use a basis of $1,000.00 per acre for the land purchases by Madison Financial. Greg Young said McDougal did not have documented support for this amount, but that it was calculated in McDougal's head. Federal Home Loan Bank Board Report of Examination (Mar. 4, 1986) (Doc. No. 99-00038824). The title documentation for this sale became significant: the legal description for this property was mistakenly used in the first version of the May 1, 1986 option agreement drafted by Mrs. Clinton.

[706] Latham 3/28/95 GJ at 48-50. That criminal case was United States v. Latham, No. CR-LR-89-29 (E.D. Ark.). Latham pleaded guilty to one count of violating 18 U.S.C. §1006.

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iii. Larry Kuca.

On November 20, 1985, Larry Kuca, a business partner of Jim McDougal and the general manager of Campobello Properties Ventures, purchased an undeveloped parcel from Madison Financial for $120,000. Madison Guaranty loaned Kuca $108,000 in the form of a check sent to Madison Financial.[707] Kuca provided a $12,000 down payment from a $15,000 bonus received from Campobello Properties Ventures. Madison Financial claimed a paper profit of $99,000 on the sale.[708]

b. Madison Financial and Ward Developed Property South of 145th Street, and Hillary Rodham Clinton and Rose Provided Legal Work.

Jim McDougal generated many ideas to develop Castle Grande, including opening a brewery and expanding the customer base of the sewer and water utilities. This led to more legal work for Hillary Rodham Clinton and Rose.

i. An Overview of Hillary Rodham Clinton's Billings for November 1985 through January 1986.

Hillary Rodham Clinton billed Madison Guaranty for work on the "IDC" matter (matter 5) for Madison Guaranty between November 14, 1985, and June 10, 1986.[709] The greatest number of billing entries for Mrs. Clinton occurred between November 14, 1985, and January 7,

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[707] Cashier's Check No. 3468 from the account of Madison Guaranty payable to Madison Financial Corp. for $108,000.00 noted "Loan 3134-50 Larry Kuca" (Dec. 4, 1985) (Doc. No. 99-00042906).

[708] Federal Home Loan Bank Board Report of Examination (Mar. 4, 1986) (Doc. Nos. 99-00038824 through 38825).

[709] Rose Billing Records (Jan. 1986 through June 1986) (Doc. Nos. DEK015016 through 15019, DEK015021 through 15022, DEK015029 through 15032, and DEK015038).

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1986,[710] when Mrs. Clinton billed for twelve conferences with Seth Ward,[711] and two conferences in November 1985 with Webb Hubbell.[712] Billing entries for these conferences did not describe the subjects discussed.

In April 1995, before Mrs. Clinton's attorneys produced the Rose/Madison Guaranty billing records, Mrs. Clinton testified that when Madison Guaranty hired Rose, she was to be the billing partner, but have no substantive role in Rose's work for Madison Guaranty.[713] Besides matters with the Arkansas Securities Department, Mrs. Clinton testified that she did not remember doing work on any other matters.[714]

A Rose fee allocation recap prepared by Ronald Clark of the Rose Law Firm in 1993 showed that Mrs. Clinton received a $2,731.25 fee allocation for "Madison Guaranty/Stock Offering and IDC" in January 1986 (by several times the largest fee allocation she received on Madison Guaranty matters).[715] Mrs. Clinton testified that she did not remember what the IDC matter was or what work she may have done.[716] After billing records were produced in January

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[710] Id.

[711] Rose Billing Records (Nov. 1985 through Jan. 1986) (Doc. Nos. DEK014991, DEK015012, DEK015014, and DEK015016 through 15019).

[712] Rose Billing Records (Jan. 1986) (Doc. Nos. DEK015014 and DEK015008 through 15009).

[713] H. Clinton 4/22/95 Depo. at 15.

[714] Id. at 30-31.

[715] Recap of fees from Madison Guaranty Savings & Loan Final Recap at 2 (for period 1983 through Sept. 1987) (Doc. No. 105-00083353 through 354). H. Clinton 4/22/95 Depo. at 41. When discovered, the billing records listed that in fact the entire $2,731.25 was for the IDC matter. Rose Law Firm Billing Records (Jan. 21, 1986) (Doc. No. DEK015017).

[716] H. Clinton 4/22/95 Depo. at 41-43.

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1996, Mrs. Clinton testified that she still did not remember the specifics of conferences shown in the billing records, but the billing records led her to believe they were part of legal research Rose performed for Madison Guaranty on the brewery and the sewer and water utilities.[717]

Seth Ward testified that he did not remember any discussions with Mrs. Clinton.[718] Webb Hubbell testified in 1996 that he remembered talking to Rick Massey, Mrs. Clinton, and Ward about the work being done.[719]

In addition to her work reflected on Rose's billing memoranda, Mrs. Clinton charged Madison Guaranty for an additional 14.5 hours of undocumented legal work on the IDC matter, performed prior to January 30, 1986. On January 30, 1986, Rose (through Mrs. Clinton as billing partner) sent Madison Guaranty five bills for legal services, one for each open matter.[720] On the draft bill for the IDC matter, the computerized billing memorandum said Mrs. Clinton had performed $912.50 worth of legal work on IDC.[721] Mrs. Clinton made a handwritten change to the billing memorandum to increase her own billings to $2,731.25.[722] She did not indicate on the billing memorandum what additional work justified this increase. No supporting information for this work was ever entered into the Rose billing computer. Significantly, Mrs. Clinton's

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[717] H. Clinton 4/25/98 Depo. at 74.

[718] Ward 1/17/96 GJ at 62.

[719] Hubbell 8/22/96 GJ at 21.

[720] Rose Billing Records (Jan. 1986) (Doc. Nos. DEK015008, 015011, 015013 and 015016).

[721] Rose Billing Records (Jan. 1986) (Doc. No. DEK015017).

[722] Id.

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timesheets for the 1985 to 1986 time period were never found or produced.[723]

ii. The Brewery Proposal and the "Wet/Dry Issue."

On November 14, 1985, Mrs. Clinton billed Madison Guaranty a half hour for a "Conference with Seth Ward regarding purchase from Brick Lile."[724] On November 20, 1985, Jim McDougal sent Ward a memorandum about the Castle Grande property sales and a proposal, involving Bill Lyon, for a brewery on the property.[725] Ward spoke with Hubbell about the brewery, and Ward told Hubbell that "McDougal had a potential purchaser for part of the property that was going to put a brewery in, a beer brewery, that was also going to have kind of an open-air, where you sit and drink beer at the brewery."[726]

The November 20, 1985 memorandum from McDougal to Seth Ward said:

> Subject to approval by the ABC [the Alcoholic Beverage Commission], Bill will place his brewery in the shell building, along with a tasting room. I have spoken with the Governor on this matter and expect that it will be approved. We must be very careful to not mention that there will be a "tavern" in the location, as word is

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[723] The only Rose Firm timesheets that the Independent Counsel obtained for Mrs. Clinton were her 1987-1989 timesheets produced on January 23, 1996 by Webster Hubbell. As discussed in detail in Part D of this Report, in 1992, during the Presidential campaign Mrs. Clinton's secretary, Millie Alston, requested Mrs. Clinton's timesheets for the period 1985-86 from Rose storage. Those timesheets have never been located by this or any other investigation.

[724] This entry was actually billed to the "General" matter number, but the reference to the "purchase from Brick Lile" clearly refers to the IDC matter. Lile was involved in the IDC sale to MFC and Ward. Rose Billing Records (Jan. 1986) (Doc. Nos. DEK015014 and 015016).

[725] Memo from Jim McDougal to Seth Ward (Nov. 20, 1985) (Doc. No. 105-00050190).

[726] Hubbell 8/22/96 GJ at 59. McDougal said the brewery was his idea. J. McDougal 8/96-6/97 Int. at 15. Bill Lyon denied the brewery was his idea. Lyon already operated a brewery in Little Rock. He said McDougal pressed him to move his operation to the Castle Grande site. Lyon said he humored McDougal because he had several outstanding loans from Madison Guaranty, but he never seriously considered moving his brewery operation. Lyon 12/14/95 Senate Whitewater Comm. Depo. at 38; Lyon 1/23/96 Senate Whitewater Comm. Depo. at 62.

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already out to that effect and it is causing us problems in the area. Bill's operation must be sold to both the state regulators and to the public as a tourist attraction.[727]

Also on November 20, 1985, Mrs. Clinton billed the IDC matter one hour for "Conference with Seth Ward; conference with W. Hubbell."[728] Mrs. Clinton later testified about her November 1985 entries in the billing records:

Q. . . . [L]et me direct your attention to page DEK015014 in the billing records.

There is, it appears that that is the first, well, this is under Matter: General. And there is an entry HRC 11/14/85, conference with Seth Ward regarding purchase from Brick Lile. Do you know who Brick Lile was?

A. I do. I do know who Brick Lile was.

Q. Is he a lawyer or a businessman?

A. I thought he was a businessman. He's deceased now, I believe.

Q. And then the next, on the 20th, conference with S. Ward; conference with W. Hubbell. Then there is a, if you look at page DEK015009, which is five pages before that, there is an entry on 11/26/85, conference with S. Ward; conference with T. Thrash; conference with W. Hubbell. Did you talk with Mr. Hubbell about this property that had been bought by Madison Financial and by Seth Ward?

A. I may very well have, if that's what the billing records reflect. I know that there were a number of conversations with many people about the uses that the property would be put to. So, that's all I can tell you, based on the billing records.

Q. Did you talk with Mr. Ward about how it came about that he was an owner of some of the property down there?

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[727] Memo from Jim McDougal to Seth Ward (Nov. 20, 1985) (Doc. No. 105-00050190).

[728] Rose Billing Records (Jan. 1986) (Doc. No. DEK015014).

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A. No, I did not.

Q. Did you know that Mr. Ward was an owner of part of that property?

A. I did not know that.

Q. What did you know about Mr. Ward? Why were you billing Madison Guaranty Savings & Loan for a conference with Seth Ward?

A. Because I believed that Mr. Ward worked for Madison Guaranty, that he was an employee or a contract agent, and that part of his duties for Madison was to find land that Madison could purchase, and then find uses for land that Madison could purchase, or had purchased.

So, my understanding during this period and my review of the documents is that Mr. Ward was very interested in trying to figure out how Madison Guaranty could make use of this property that they had just purchased, known as IDC. And that's what I worked on with the wet/dry issue and some of the other matters that I discussed with Mr. Ward and others during this two or three-month period.[729]

After the November 20, 1985 memorandum from McDougal to Ward there arose an issue about whether the proposed brewery site was located in a "dry" township (one that prohibited sales of alcoholic beverages). McDougal later stated that he had called Mrs. Clinton to have research done, and -- if the site was located in a "dry" township -- on how to make it a "wet" township.[730] McDougal remembered calling Mrs. Clinton to handle this because: 1) he did not know Webb Hubbell personally; and 2) he wanted Mrs. Clinton to work on it because it involved a state agency and he thought she would have more influence with the state agency.[731]

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[729] H. Clinton 4/25/98 Depo. at 65-67.

[730] J. McDougal 8/96-6/97 Int. at 15.

[731] J. McDougal 8/96-6/97 Int. at 15. Jim Guy Tucker later said he had frequently thought that Mrs. Clinton's position at Rose gave it an unfair advantage when dealing with

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McDougal continued to meet with Ward, Jim Guy Tucker, and others to discuss development of the property. On November 21, 1985, for example, McDougal met with Ward, Tucker, Bill Lyon, and an engineer named James Castin, to discuss joint efforts to develop the Castle Grande property. As confirmed in November 25, 1985 letters from Castin to Tucker and McDougal, the parties discussed various residential and commercial development ideas and the possibility of Castin doing a Master Development Plan for the property.[732]

On November 26, 1985, the day after the Castin letters were sent, Mrs. Clinton billed IDC for one hour for "Conference with S. Ward; conference T. Thrash; conference with Webb Hubbell."[733]

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agencies whose members were appointed by Governor Clinton. See Tucker 3/18/98 GJ at 72-81. In describing an action involving the Arkansas Public Services Commission, in which the other party was represented by Rose, Tucker said, "But this was another instance of at least my client and I feeling that this was a totally improper role for the Rose Law Firm to have. Again, you have a state commission which, in this case, is paying state funds to the law firm in which the wife of the governor is located, and the governor has appointed the members of the commission involved and we were directly adversarial." Id. at 73-74. Tucker also contended that other lawyers in Little Rock were angry about the situation. Id. at 74.

[732] Letter from John A. Castin, engineer, Manes, Castin, Massey, McGetrick, to Jim McDougal (Nov. 25, 1985) (Doc. Nos. 99-00042721 through 42725); Letter from John A. Castin, engineer, Manes, Castin, Massey, McGetrick, to Jim Guy Tucker, attorney (Nov. 25, 1985) (Doc. Nos. 199-00206234 through 206235).

[733] Rose Billing Records (Jan. 1986) (Doc. No. DEK015009). Thrash did not remember this conference. Thrash 3/20/96 GJ at 40. Mrs. Clinton's calendar for November 27, 1985 said, "10 Seth Ward" along with some illegible notes that include the name "Hubbell." Mrs. Clinton's calendar (Nov. 27, 1985) (Doc. No. DEK212935). There is no corresponding entry in the billing records for this calendar entry.

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iii. Mrs. Clinton's December 1985 Activities.

December 1985 was Mrs. Clinton's most active month on the IDC matter, with ten separate billing entries on ten different days.[734] On December 6, 1985, Mrs. Clinton billed .3 hours for "Telephone conference with S. Ward; D. Dover."[735] On December 10, Mrs. Clinton billed .5 hours for "Telephone conference with S. Ward; telephone conference with D. Dover."[736] On December 11, 1985, Mrs. Clinton billed another 0.5 hours to the IDC matter for "Telephone conference with S. Ward."[737]

On December 17, 1985, Bill Lyon left a message for McDougal at Madison Guaranty: "Called and wanted Davis to take a map of [illegible] property to ABC. The building Lyon is looking at is in a dry township."[738] Two days later, on December 19, Jack Castin left a message for McDougal at Madison Guaranty: "Needs plat of 145th St. property showing pieces that have been sold or an option has been given. Also, needs appt to see you early next week or immediate after Christmas."[739] That same day, Mrs. Clinton billed 0.5 hours to the IDC matter for

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[734] Rose Billing Records (Jan. 1986) (Doc. Nos. DEK015012, DEK015014, and DEK015017).

[735] Rose Billing Records (Jan. 1986) (Doc. No. DEK015017). Dover was IDC's attorney, and he later remembered receiving a phone call from Mrs. Clinton about "liquor laws." Dover 7/18/96 Int. at 2.

[736] Rose Billing Records (Jan. 1986) (Doc. No. DEK015017).

[737] Id.

[738] Madison Guaranty Phone Logs (Dec. 17, 1985) (Doc. No. 56-00114362). It was proposed the brewery would be located in a "shell" building already on the property. J. McDougal 4/2/97 GJ at 125. "ABC" was the Alcohol Beverage Commission, which was the state agency regulating such issues.

[739] Madison Guaranty Phone Logs (Dec. 19, 1985) (Doc. No. 56-00114366).

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"Telephone conference with S. Ward."[740] The next day, December 20, 1985, Mrs. Clinton billed one hour to IDC for "telephone conference with S. Ward; search for map."[741] Mrs. Clinton then billed IDC one hour on December 23, for "Telephone conference with to and from S. Ward's office."[742] Mrs. Clinton's frequent conferences with Ward continued, billing one hour for "Telephone conference with Seth Ward" on Christmas Eve December 24,[743] and 0.5 hours for "Conference [in person] with S. Ward telephone conference with election commission on December 26."[744]

In 1998 Mrs. Clinton discussed her work for Madison Guaranty during this period:

Q. Now, tell us, based on the backup billing memoranda there, what you -- did you -- did you do some of that work?

A. Yes, I did.

Q. And what were some of the things that you did as represented by your entries there?

A. Telephone conferences and conferences primarily.

Q. And are they primarily with Seth Ward?

A. They are primarily with Seth Ward.

Q. And based on well, what did they relate to?

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[740] Rose Billing Records (Jan. 1986) (Doc. No. DEK015017).

[741] Id.

[742] Id.

[743] Id.

[744] Id. This was billed to Matter 2 -- Limited Partnership, but the description of services indicated that it was related to IDC. Id.

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A. Well, again, based on not my memory because I don't have a memory, but based on my review of the billing records and the work that was going on in the firm at that time, they concerned Mr. Ward's questions on behalf of Madison about uses that could be worked on for the IDC property.

The two that we spent the most time on were an idea of a brewery with a tasting room, and that engendered a great deal of research and discussion. And then an issue related to whether or not the sewer and water system that was on the IDC property either could be expanded or could sell water off of the property. And that also engendered a good bit of research and work.[745]

iv. Rose Began Legal Research.

Jim McDougal spoke with Mrs. Clinton about legal research for a brewery at the Castle Grande property.[746] Rose performed legal research on the brewery-related issues. On December 30, 1985, Rose attorney Rick Donovan billed the IDC file for researching "county court local option election records."[747] Over the next week, Donovan billed Madison Guaranty:

December 31, 1985: "Conference with ABC [Alcoholic Beverage Commission] regarding wet-dry precincts; townships south of the river; researched local option law;"

January 2, 1986: "Completed research on 'wet-dry' issue; drafted memo";

January 3, 1986: "Went back to county clerk to check for order of court regarding township wet-dry deletion; revised memo."[748]

The memorandum discussed in Donovan's billing entries is a separate memorandum he wrote addressed to Mrs. Clinton dated January 3, 1986 "Re: Madison Guaranty Savings & Loan-

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[745] H. Clinton 4/25/98 Depo. at 74.

[746] J. McDougal 4/2/97 GJ at 126.

[747] Rose Billing Records (Jan. 1986) (Doc. No. DEK015017).

[748] Rose Billing Records (Jan. 1986) (Doc. No. DEK015017).

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'Wet'-'Dry' Issue." It concluded the proposed brewery location was in a township that probably retained its dry status after being annexed by a wet township. Donovan concluded that Madison Guaranty could build the brewery on the proposed site only if:

(1) it convinced the state Alcoholic Beverage Commission that the proposed site was not located in the old township; or

(2) it convinced the Alcoholic Beverage Commission, and eventually the courts, that a dry township loses its dry status when such a dry township becomes annexed by a wet township.[749]

On April 22, 1995, Mrs. Clinton testified that she had no specific recollection of working on the wet/dry issue:

Q. And there is actually a memo from Rick Donovan to you. Do you recall anything what that was about?

A. I don't recall specifically, but there was some property that Madison Guaranty either owned or was trying to develop that was partially in a township that was dry and they were curious about how to make it wet, or something like that. That's all I remember right now.

. . . .

Q. If you understand where I'm coming from, there is an allegation that they are putting you on retainer and then and/or the Rose Law Firm on retainer to take care of money problems. And the question I have is, that's why I'm saying, what work did you do or was there any system whereby if you're the one that brought the business in, you get an allocation even though you weren't actually doing work?

A. Well, I did work. I just can't remember ten years from the work exactly what the work was.[750]

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[749] Memo from Rick Donovan, Rose attorney, to Hillary Rodham Clinton (Jan. 3, 1986) (Doc. Nos. 105-0003691 through 3696).

[750] H. Clinton 4/22/95 Depo. at 42-43. As discussed elsewhere in this Report, in 1992 Mrs. Clinton reviewed the Rose billing records for Madison Guaranty legal work.

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In 1998, Mrs. Clinton testified that she and Ward talked about liquor issues and a possible brewery or tasting room.[751]

Mrs. Clinton discussed Donovan's memorandum with Seth Ward and Ken Shemin, another Rose partner.[752] In a handwritten note to Donovan, Mrs. Clinton said she had "visited with Seth Ward and gave him a copy of your memo."[753] In the note, Mrs. Clinton also said she discussed the memorandum with Ken Shemin and that she wanted Donovan to meet with Shemin "about a strategy to approach the ABC to argue the 'dissolved township' theory."[754] Donovan met with Shemin and Mrs. Clinton, then resumed his research, resulting in another memorandum to Mrs. Clinton, dated January 23, 1986, on the dissolved township theory.[755]

On February 7, 1986, McDougal sent a memorandum to Jim Guy Tucker attaching a copy of the first Donovan memorandum to Mrs. Clinton, stating: "Here is a copy of a legal opinion

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[751] H. Clinton 4/25/98 Depo. at 88 ("Q. And so, Mr. Ward is talking to you, you've already said, about liquor issues having to do with a possible brewery or tasting room, have you not? A. That's right"), and at 102-03 ("I talked to Mr. Ward about the plans for the brewery. Mr. Ward's questions, as reflected in Mr. Donovan's memos, was whether this particular water and sewer company could extend services. And one of the places they were thinking of extending it, according to Mr. Donovan's memo, was Maple Creek").

[752] Rose Billing Records (Jan. 1986) (Doc. No. DEK015017).

[753] Undated handwritten note from Hillary Clinton to Rick Donovan, Rose attorney (Doc. No. 105-00003698); H. Clinton 4/25/98 Depo. at 89-90 (Mrs. Clinton's testimony about the note).

[754] Undated handwritten note from Hillary Clinton to Rick Donovan (Doc. No. 105-00003698); H. Clinton 4/25/98 Depo. at 89-90 (Mrs. Clinton's testimony about the note).

[755] Memo from Richard Donovan, Rose attorney, to Hillary Rodham Clinton (Jan. 23,1986) (Doc. No. 105-00003675).

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Seth got from his attorney."[756] Despite legal work and discussions between McDougal, Lyon, and Jack Castin, there is no evidence the proposal ever moved beyond the discussion stage.[757] Mrs. Clinton acknowledged in 1998 that Donovan did legal research for Madison Guaranty "to find out whether it is even possible under the law to do what apparently Mr. Ward and McDougal want to do, and we didn't give him the answer he wanted to hear, because we told him it was not possible."[758]

v. Mrs. Clinton and Rose Worked on the Utilities Issues.

As part of the IDC sale, Seth Ward had purchased the sewer and water utilities, which serviced the entire IDC property. The utilities were important because McDougal previously had difficulty securing utilities for another nearby Madison Guaranty development -- Maple Creek -- several miles south of the IDC property. McDougal intended to connect the utilities facilities at Castle Grande to Maple Creek and also to his proposed future development at Lorance Heights, located immediately south of Castle Grande,[759] between Castle Grande and Maple Creek. After the sale of the IDC utilities to Ward, McDougal explored the possibility of extending the utility service outside the former IDC property, and had Rose perform legal work on the issue. Reinforcing the conclusion that Ward was not the true owner of the property, even though on

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[756] Memo from Jim McDougal, to Jim Guy Tucker, Mitchell, Williams, Selig, Jackson and Tucker attorney (Feb. 7, 1986) (Doc. No. 174-00230962).

[757] See J. McDougal 4/2/97 GJ at 128.

[758] H. Clinton 4/25/98 Depo. at 89.

[759] See Memorandum from Rick Donovan to Hillary Rodham Clinton (Feb. 17, 1986) (Doc. Nos. 105-00003642 through 3653) (focusing on whether services could be sold to Maple Creek).

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paper Ward "owned" the utilities, Rose billed the legal work on this matter to the Madison Guaranty IDC file. In Donovan's memo to Mrs. Clinton of February 17, 1986, it is stated that Madison Guaranty purchased the stock of IDC's subsidiary, the Industrial Service Corporation, which had necessary permits regarding the utility.[760] In fact, Ward had purchased the stock to the company as part of his purchase of the sewer and water facilities. Mrs. Clinton later testified that she did not think she was aware the sewer and water utility was purchased by Seth Ward.[761]

In 1998, Mrs. Clinton testified that she did not "have any independent understanding" of the utility issue.[762] She also testified that she

> believe[d] that when Madison bought the IDC property, there was a utility, a water and sewer system on the property. And that when Madison was looking at ways to develop the property, one of the questions they faced was whether that utility either could be expanded or the services sold to customers beyond the boundary of the Industrial Corporation land. So, they wanted some legal analysis of what their options were.[763]

The billing records show work on the utility issue was first done by Rose attorney R. Davis Thomas in mid-October 1985 -- two weeks after Ward's straw purchase of the utilities. On October 18, Thomas billed the IDC matter 3.5 hours for "Research on what approvals, permits, etc. are necessary to operate sewer and water facilities; multiple telephone conferences with state agencies; memo to W. Hubbell."[764] By 1995, Thomas could not remember anything about the

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[760] See Memorandum from Rick Donovan to Hillary Rodham Clinton (Feb. 17, 1986) (Doc. No. 105-00003642) ("facts" section of the memo on who purchased the utilities).

[761] H. Clinton 4/25/98 Depo. at 92.

[762] Id. at 91.

[763] Id. at 91-92.

[764] Rose Billing Records (Jan. 1986) (Doc. No. DEK015017). Neither The Independent

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research or preparation of a memorandum.[765]

Mrs. Clinton had not yet billed to the IDC matter before October 18. Webb Hubbell was listed on the New Client Master Form as the attorney responsible. Thus, the first legal research on the matter resulted in a memorandum addressed to him, not Mrs. Clinton.[766]

After Thomas's October 18, 1985 work, specific billing entries on utility issues did not appear again until February 1986, shortly before the utilities were sold. On February 11, 1986, Donovan researched the need to register as a public utility and whether Madison Guaranty could sell water services outside Castle Grande to a business outside the IDC development and to another real estate development, Maple Creek.[767]

Donovan telephoned people at two state agencies: the Arkansas Department of Health and the Arkansas Public Service Commission ("PSC"). Donovan concluded, in his February 17,

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Counsel, nor any other investigative body, located a copy of this memo. Hubbell had no specific recollection of the memo beyond the information in the billing records. See Hubbell 8/22/96 GJ at 108.

[765] Thomas 12/19/95 RTC Int. at 13.

[766] Between October and February, there were no entries in the billing records showing work on utility issues. Mrs. Clinton participated in twelve unspecified conferences with Seth Ward between November 14, 1985 and January 7, 1986. In addition, Mrs. Clinton billed Madison Guaranty for two conferences with Hubbell on November 20 and November 26, 1985 -- one month after the memorandum from Thomas on his utility research. Mrs. Clinton also billed Madison Guaranty on the IDC matter for an additional 14.5 hours of unaccounted time.

[767] Rose Billing Records (Mar. 1986) (Doc. No. DEK015019); Memo from Rick Donovan to Hillary Rodham Clinton (Feb. 17, 1986) (Doc. Nos. 105-00003642 through 3653). McDougal had said the research was requested because Jim Guy Tucker was concerned about whether the utilities would be subject to regulation, especially because he was about to purchase the utility. McDougal said it would have been logical for him to call Mrs. Clinton on a matter involving state agencies, though he did not remember any specific conversations with her on any utility issues. J. McDougal 8/96-6/97 Int. at 22; J. McDougal 4/2/97 GJ at 129-30.

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1986 memorandum addressed to Mrs. Clinton, that Madison Guaranty did not have to register as a public utility, but that it did need to get licenses and permits from the Arkansas State Board of Health and the Arkansas Pollution Control Commission.[768] He also concluded that Madison Guaranty could sell sewer and water services to customers outside the original parcel development as long as service to the original parcel area was not impaired.[769]

In 1998, Mrs. Clinton testified "we did some work for Madison Guaranty on legal issues relating to that [sewer and water] utility."[770] She said, "[t]he only information that I learned was the work that Rick Donovan did concerning the approvals and permits that were necessary."[771]

c. Madison Financial Prepared to Sell the Utilities to Castle Sewer and Water.

On Tuesday, February 18, 1986, the day after Donovan's memorandum, Jim McDougal wrote Andy Clark and Don Denton to prepare for the sale of the sewer and water utilities.[772] On Thursday, February 20, Madison Guaranty's Executive Committee approved the sale of the sewer and water facilities to Castle Sewer and Water Corporation -- a newly formed Arkansas corporation owned by Jim Guy Tucker and R. D. Randolph.[773] Tucker had Castle Sewer & Water

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[768] Memo from Rick Donovan, Rose attorney, to Hillary Rodham Clinton (Feb. 17, 1986) (Doc. Nos. 105-00003642 through 3653; RIC 000048 through 59).

[769] Id.

[770] H. Clinton 4/25/98 Depo. at 69.

[771] Id. at 70.

[772] Memo from Jim McDougal to Andy Clark, Rose attorney (Feb. 18, 1986) (Doc. No. 56-00125840); Memo from Jim McDougal, to Don Denton, Senior Vice-President, Madison Guaranty (Feb. 18, 1986) (Doc. No. 56-00125872).

[773] Articles of Incorporation of Castle Sewer and Water Corporation (Dec. 31, 1985)

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incorporated with the help of his law firm in the few days after December 31, 1985.[774] Notes showed that Tucker continued his preparations for the purchase of the utilities throughout the month of January 1986.[775] Tucker completed an application for a loan from David Hale and CMS for financing on February 14, 1986.[776]

Madison Financial and Castle Sewer & Water signed a purchase agreement on February 20, 1986.[777] Castle Sewer & Water was to purchase 100 percent of the stock of the Industrial Service Corporation ("ISC") from Seth Ward.[778] Castle Sewer & Water did not want to register the ISC stock for the sale (from Ward to Castle Sewer & Water). To proceed without registering the stock, the parties needed approval from the ASD commissioner, Beverly Bassett. On Friday, February 21, 1986, Breck Speed, an attorney at Mitchell Williams, wrote Bassett requesting

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(Doc. Nos. 199-00206313 through 206320); Denton 8/19/94 FDIC-OIG Aff. at 4. On February 20, 1986, the Madison Guaranty Executive Committee also approved the Dean Paul $825,000 loan. Loan Submission Worksheet (Feb. 20, 1986) (Doc. No. 174-00102631).

[774] Tucker 3/18/98 GJ at 137-139.

[775] Tucker's undated handwritten notes (Doc. Nos. 083-00001367 through 1370); Tucker's handwritten notes (Jan. 29, 1986) (Doc. Nos. 083-00001374 through 1379); Tucker's handwritten notes (Jan. 17, 1986) (Doc. Nos. 083-00001159 through 1160).

[776] Tucker's loan from CMS was made possible by the fraudulent loan of $825,000 to Dean Paul and the resulting infusion of money into CMS.

[777] Offer and Acceptance for the purchase of Castle Sewer and Water Corp. (Feb. 14, 1986) (Doc. No. 56-00127552). Entries in John Latham's calendar also reflect possible discussions within Madison Guaranty at this time. On February 13, 1986, Latham notes "Seth" and "Don . . . complete sale from Seth" Latham's calendar (Feb. 13, 1986) (Doc. Nos. AAP-0016936 through 16937). Latham also had "Seth" on his calendar entry for February 20, 1986 the day the purchase agreement was signed. Latham's calendar (Feb. 20, 1986) (Doc. No. AAP-0016948).

[778] ISC was a holding company set up by IDC to operate the sewer and water facilities and hold the necessary operating permits and licenses. Ward had purchased all the stock in ISC

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approval of the ISC stock sale to Castle Sewer & Water.[779]

d. Madison Guaranty Received Formal Notice of the FHLBB Examination.

In late 1985 and early 1986, Madison Guaranty officials knew -- and had for several months -- that the FHLBB would conduct an examination of Madison Guaranty[780] by at least mid-February 1986.[781] Madison received official notification from the FHLBB on February 24, 1986, that the examination would begin on Monday, March 4, 1986. The FHLBB sent various questionnaires for Madison Guaranty's management to complete, which had to be completed "as of" February 28, 1986.[782] The examination presented serious problems for Madison Guaranty and the Castle Grande project, due to Madison Guaranty's books and records being "poorly documented."[783]

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as part of the earlier IDC transaction.

[779] Letter from James B. Speed II, Mitchell Williams attorney, to Beverly Bassett, Arkansas Securities Department Commissioner (Feb. 21, 1986) (Doc. Nos. 143A-00002107 through 2109); see also Letter from John S. Selig, Mitchell, William, Selig and Tucker attorney to Beverly Bassett, Arkansas Securities Department Commissioner (Feb. 26, 1986 (Doc. Nos. 143A-00002103 through 2106) (amending request).

[780] Latham 3/28/95 GJ at 38-39.

[781] Memo from Sarah Hawkins, Madison Guaranty Senior Vice President, to John Latham, Madison Guaranty Executive Vice President (Feb. 13, 1986) (Doc. No. 105-00054850). The memo said Hawkins had learned of the examination "from a source close to the examiners" and had confirmed it with John Mack, the examiner-in-charge.

[782] Letter from James B. Jared, Supervisor, Federal Home Loan Bank of Dallas, to John Latham, President, Madison Guaranty (Feb. 24, 1986) (Doc. Nos. 99-00022828 through 22830).

[783] Denton 8/20/96 GJ at 42. Denton, a former federal bank examiner, later said:

> Financial statements were absent, mortgages frequently were not recorded if, in fact, executed. Title searches were non-existent in many cases. Descriptions of the reason for the extension [of] credit and the support for the credit were often

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e. Friday, February 28, 1986.

On Friday, February 28, 1986, a lot of activity occurred at Madison Guaranty on the Castle Grande development. Examiners were due at Madison Guaranty the next Monday. The parties to the Castle Grande transactions rushed to complete their business before the examiners came.[784] Don Denton responded to questions in the grand jury on this matter:

> Q. Were Madison Guaranty Savings & Loan loaning Seth Ward $1.15 million on a non-recourse basis -- that is, so that he would have no risk, would that be a red flag -- would that have been a red flag to the examiners?
>
> A. Yes, particularly since Madison [Financial] was also purchasing part of that same property.
>
> Q. So would it send a signal to the examiners perhaps that there may be more here, that these two people are buying this property together or maybe one for the other, is that right?
>
> A. Obviously, a non-recourse note carries more risk than a note with recourse. So the non-recourse note would certainly draw more attention from a regulator, from the examiner.
>
> Q. Did you do prior to the examiners coming in to sort of take care of that situation? That is, put down the red flag so the examiners would not see that Mr. Ward was the holder of a non-recourse note for $1.15 million?
>
> A. Yes, the note was paid off.

> not in the files. Credit applications were frequently not generated or not executed by the borrowers. . . . So the files were generally just not documented.

Denton 8/20/96 GJ at 42-43; see also id. at 44 (indicating that when Denton warned McDougal of the propriety of doing a deal at Madison Guaranty, McDougal "kind of grinned to me and said, well, Mr. Banker, you've got a lot to learn. He said, this is a savings and loan. This is not a bank. This is kind of like a candy store. You can do whatever you want to do. And the candy store term kind of stuck with me. And I think it pretty well described what McDougal's attitude about the savings and loan was").

[784] Denton 8/22/96 GJ at 48-50.

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Q. At whose direction was it paid off?

A. McDougal.

Q. And the purpose was -- was the purpose solely to -- so that the examiners would not question what was going on?

A. I don't know if that was solely the purpose. I think it was the primary purpose. It was to get the non-recourse note off the books.

Q. Did anyone tell you at the institution prior to the examiners coming in to get ready for a flurry of activity or something to that effect?

A. I don't recall such a statement. I just don't recall having -- I know there was a flurry of activity, but I don't recall there being an announcement that one was coming. There easily could have been. I just don't recall.[785]

By the end of that Friday, several Madison Guaranty-related transactions closed, which later would gain the attention of examiners and criminal investigators:

- Loan from Madison Guaranty to finance sale of property north of 145th Street to Senator J. William Fulbright.
- $1.05 million loan from Madison Guaranty to Castle Sewer and Water to finance sale of the utility.
- $825,000 loan to Dean Paul, Ltd., to finance the purchase of property from David Hale.

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[785] Denton 8/22/96 GJ at 48-50. At his 1996 criminal trial, McDougal testified the arrival of the examiners did not influence the timing of the transactions. See generally Tr. at 7017-19, United States v. McDougal, et al., No. LR-CR-95-173 (E.D. Ark.) (testimony of J. McDougal).

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i. Sale of Property North of 145th Street to Senator Fulbright.

On February 28, 1986, virtually all land north of 145th street -- except a portion called Holman Acres -- was sold to Senator J. William Fulbright.[786] Before the sale, the property was transferred from Ward to Madison Financial and then sold by Madison Financial to Senator Fulbright. Senator Fulbright purchased the land for $770,000, which was then used to pay down Ward's $1.15 million loan from Madison Guaranty.[787] After the Fulbright and Castle Sewer & Water sales closed, Ward's $1.15 million loan (loan no. 2962) was marked "paid in full," with the balance of $70,000 carried over to another Madison Guaranty loan to Ward.[788] That $70,000 loan (loan no. 3359) was unsecured, had an interest rate of 12 percent per annum, and was due in a single payment scheduled for August 25, 1986.

The sale of Ward's Castle Grande property and use of the sale proceeds to pay off Ward's $1.15 million loan implicated the terms of the original September 24, 1985 agreement between Ward and McDougal. The original September 24, 1985 agreement gave Madison Guaranty with an option to re-purchase Seth Ward's property from Ward at any time for the amount of his nonrecourse loan plus all accrued interest. Once the February 28, 1986 transactions occurred, the

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[786] Warranty Deed from Madison Financial to J. W. Fulbright (Feb. 28, 1996) (Doc. Nos. 56-00127325 through 127329); Denton 8/20/96 GJ at 47-48 (discussing the sale to Fulbright).

[787] See Denton 8/20/96 GJ at 47 (indicating that Denton "applied the proceeds" of the Castle Sewer and Water sale and the purchase by former Senator Fulbright to "Seth Ward's note, bringing the total down to something like $70,000. The original, if you recall, was 1.15 million. And those other loan sales brought the total down to something around $70,000"); J. McDougal 4/2/97 GJ at 89 (discussing the purchase by Senator Fulbright at a "purchase price" of $770,000).

[788] Loan Documentation from Madison Guaranty to Seth Ward (Oct. 15, 1985) (Doc. Nos. 396-00000248 through 251); see also Hubbell 8/22/96 GJ at 102 (discussing the pay off of

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terms of the original September 24, 1985 agreement gave Madison Guaranty an option to re-purchase Holman Acres -- Ward's remaining Castle Grande property -- for the remaining $70,000 balance of Ward's $1.15 million loan.

Madison Guaranty did not exercise its option to buy Holman Acres from Ward for $70,000. Instead, Ward and Madison Guaranty later used Holman Acres as: 1) collateral for a March 31, 1986 $400,000 loan from Madison Guaranty to Ward; 2) the subject property for a $400,000 May 1, 1986 option agreement; and 3) collateral on a June 6, 1986 $70,000 loan to Ward. As discussed below, in December 1986, Ward returned the Holman Acres property to Madison Guaranty instead of repaying his March 31 and June 6, 1986 loans. [789] Also as discussed below, the backdated September 24, 1985 agreement between Ward and Madison Guaranty exempted Holman Acres from the option to purchase contained in the original September 24 agreement. This change was necessary to disguise the fraud committed by Denton and Ward when Madison Financial agreed to pay $400,000 for a parcel that Madison Financial already had a right to purchase for $70,000.

ii. The Sale of the Utility to Castle Sewer & Water.

On Friday, February 28, 1986, the sale of utilities stock and facilities from Madison Financial to Castle Sewer and Water closed. Castle Sewer & Water paid $1.2 million for the

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"the big note, the million dollar note" and the left over $70,000).

[789] Ward did repay $100,000 of the March 31, 1986 $400,000 loan. Denton 8/20/96 GJ at 67; Ward 2/12/96 Senate Whitewater Comm. Depo at 39-40.

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Castle Grande sewer and water system.[790] Madison Guaranty made two loans, one for $950,000 and the other for $100,000 for this purchase. As detailed below, Capital Management Services, a company owned by David Hale, loaned Castle Sewer & Water Corporation $150,000 as a down payment for this purchase."[791]

Proceeds from the Castle Sewer & Water sale, along with proceeds of a sale of most of the property north of 145th Street to Senator Fulbright (discussed above), were used to pay off Ward's $1.15 million loan from Madison Guaranty.[792] In addition, Arkansas Securities Commissioner Beverly Bassett issued an order approving the ISC stock sale.[793]

iii. Madison Guaranty $825,000 Loan to Dean Paul, Ltd.

The purchase of the utility was facilitated by the fraudulent $825,000 loan made on February 28, 1986 to Dean Paul, Ltd. On February 20, 1986, McDougal arranged for Madison Guaranty to loan Dean Paul $825,000.[794] With that loan, Paul purchased three parcels of property from David Hale.[795] To justify a loan that large, Hale, with the assistance of Bill Watt, secured fraudulent appraisals that greatly overvalued the properties from Robert Palmer, a Little Rock

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[790] Denton 8/19/94 FDIC-OIG Aff. at 4.

[791] Id.

[792] Denton 8/20/96 GJ at 47-48.

[793] Findings of Fact, In the Matter of: Proposed Sale of Stock by Seth Ward to Castle Sewer and Water Corporation, Case No. 66-11-S (State of Ark. Securities Department) (Feb. 28, 1986) (Doc. Nos. 143A-00002110 through 2111).

[794] Tr. at 1960-61, United States v. McDougal, et al., No. LR-CR-95-173 (E.D. Ark.) (testimony of Paul); see also Tr. at 1109-11, United States v. McDougal, et al., No. LR-CR-95-173 (E.D. Ark.) (testimony of Denton).

[795] Tr. at 3099, United States v. McDougal, et al., No. LR-CR-95-173 (E.D. Ark.)

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appraiser.[796] With the payment from Paul for the over-valued properties, the real estate transactions netted Hale approximately $500,000 in "profits," which Hale put into CMS. This money allowed CMS to receive an additional $1.5 million in funding from the SBA, and raised CMS's per-individual loan limit from $150,000 to $300,000.[797]

CMS then loaned funds to McDougal's designees. There were four such loans, all of which were fraudulent because the true nature of the transactions and the people benefited were purposefully concealed. The four such loans were: 1) $149,000 to Larry E. Kuca, McDougal's business partner;[798] 2) $65,000 to Stephen A. Smith, (Tucker and McDougal's business partner) d/b/a The Communications Company;[799] 3) $300,000 to Susan McDougal, doing business as

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(testimony of Hale).

[796] Tr. at 2178-79, United States v. McDougal, et al., No. LR-CR-95-173 (E.D. Ark.) (testimony of Palmer).

[797] Tr. at 3959-60, United States v. McDougal, et al., No. LR-CR-95-173 (E.D. Ark.) (testimony of Hale); see also Tr. at 3293, 3714-15, 3847, United States v. McDougal, et al., No. LR-CR-95-173 (E.D. Ark.) (testimony of Hale).

[798] Letter from Larry E. Kuca to David Hale (undated) (Doc. No. 0000276); Tr. at 4658-59, 4661, United States v. McDougal, et al., No. LR-CR-95-173 (E.D. Ark.) (testimony of Kuca). Kuca used the proceeds of the loan to pay off an "advance" made to him by another McDougal-related entity, Campobello Properties. Tr. at 4661, United States v. McDougal, et al., No. LR-CR-95-173 (E.D. Ark.) (testimony of Kuca). The "advance" had been used by McDougal and Kuca to finance the purchase of certain real estate while evading regulatory limitations on Madison Guaranty. Tr. at 4652-54, United States v. McDougal, et al., No. LR-CR-95-173 (E.D. Ark.) (testimony of Kuca). Details relating to this loan are discussed in Vol. I, Appendix 5.

[799] Loan Proposal prepared by The Communication Company (Doc. No. G-00001247). The loan proposal was fraudulent. See Tr. at 4807, United States v. McDougal, et al., No. LR-CR-95-173 (E.D. Ark.) (testimony of S. Smith) (discussing guilty plea); Tr. at 4833-34, 4836, United States v. McDougal, et al., No. LR-CR-95-173 (E.D. Ark.) (testimony of S. Smith). Smith used the proceeds of the loan payoff a loan taken out at Worthen Bank. Doc. No. 144-00014630 (Handwritten note from Steve Smith); Tr. 4838, United States v. McDougal, et al., No. LR-CR-95-173 (E.D. Ark.) (testimony of S. Smith). The Worthen Bank loan had financed the

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"Master Marketing," a fictitious advertising business;[800] and 4) $150,000 to Castle Sewer and Water, an entity controlled by Tucker for the purchase of the Castle Grande sewer and water system.

CMS's $150,000 loan to Castle Sewer & Water closed on February 28, 1986. When the loan was made, Tucker was listed as owning two-thirds of the Castle Sewer and Water stock, and R. D. Randolph owned the remaining one-third. CMS gave Tucker the check made out to Castle Sewer and Water for $150,000.[801] Tucker endorsed the check,[802] and used the $150,000 proceeds as a down payment on a $1,200,000 purchase of the sewer and water system from Madison Financial.[803] Castle Sewer and Water gave a $1,050,000 promissory note to Madison Financial to cover the remainder of the purchase;[804] Madison Financial assigned the note to Madison Guaranty the same day.

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purchase of real estate by a company jointly owned by McDougal, Smith and Jim Guy Tucker. Tr. at 4812, United States v. McDougal, et al., No. LR-CR-95-173 (E.D. Ark.) (testimony of S. Smith). Details relating to this loan are discussed in Vol. I, Appendix 5.

[800] Details relating to the loan to Mrs. McDougal and the use of the proceeds of the loan to benefit Whitewater Development are discussed in Vol. II, Part A of this Report. Part A also discusses the evidence relating to Hale's and Jim McDougal's allegation that President Clinton knew of the fraudulent Master Marketing loan and of the purposes to which it was put.

[801] Tr. at 3263-64, United States v. McDougal, et al., No. LR-CR-95-173 (E.D. Ark.) (testimony of Hale).

[802] Id. (testimony of Hale).

[803] Id. at 4002-03 (testimony of Hale).

[804] Id. at 1307 (testimony of Denton).

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iv. Mrs. Clinton's Activities.

Mrs. Clinton's activities on February 28, 1986 remain somewhat unclear. She billed the IDC file for .8 hours, with the only description of the work written as "Seth Ward." Given her work on the utilities issue, this Office examined whether this billing related to the contemporaneous purchase of the utility from Seth Ward by Castle Sewer & Water. No documentary evidence relating to these actions were discovered. Mrs. Clinton testified that she did not recall the events of that day.

In 1998, Mrs. Clinton provided the following testimony about her February 28, 1986 activities:

> Q. Now, I want to give you a couple of -- on February the 28th of '86, we know that this utility was sold to Castle Sewer and Water, which is a company which was incorporated by Mr. Tucker. The stock in ISC, which had been purchased by Ward, was transferred from Seth Ward to Castle Sewer and Water. That all occurred on February the 28th of '86.
>
> You have an entry in your billing records on 2/28/86 for eight-tenths of an hour, and you just have the word Seth Ward. What did you do that day with Mr. Ward.
>
> A. I have nothing to add to what the billing records say. I have no, no independent recall of anything, other than what the billing records say.
> . . . .
>
> I thought I remembered something also going on, you know. Becky Arnold, who was our paralegal, was still doing research with Rick Donovan on 2/25, 2/28/86. So, if I were, again merely guessing, which is all I can do because I don't have any direct knowledge, I would guess that whatever she was researching at the County Planning Office, at the Historical Society with the Arkansas Historical Commission, is something she reported to me and/or to Rick Donovan and it fell to me to tell Mr. Ward the results of whatever that research was.[805]

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[805] H. Clinton 4/25/98 Depo. at 94-95.

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Asked about the February 28, 1986 transactions, Mrs. Clinton said she "knew nothing about any such transactions. I did not learn anything about any such transactions until years later in the course of all these investigations."[806] Mrs. Clinton also said she learned "many years later" that "Mr. Tucker bought this sewer and water service."[807] Additionally, Mrs. Clinton testified that she did not speak with Ward about his selling his utility to Jim Guy Tucker, and that "we were not involved in the sale. There was no work we did on that sale. I didn't know about the sale."[808] Mrs. Clinton said she thought she did not know about the February 28, 1986 "as of" date of the FHLBB examination.[809]

Webb Hubbell knew about the transactions, however. He had talked to Ward about the payoff of Ward's $1.15 million loan at about the time of the February 28, 1986 transactions.[810] In 1997, David Hale, for the first time, said that he remembered speaking to Mrs. Clinton on February 28, 1986, saying she called Hale's office trying to locate Jim McDougal. According to Hale, Mrs. Clinton said she needed to speak to McDougal prior to closing.[811]

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[806] Id. at 96.

[807] Id. at 98.

[808] Id. at 103.

[809] Id. at 104.

[810] Hubbell 8/22/96 GJ at 49-50. "He would -- as I said, we were over at his house, and occasionally he would call and ask me to meet him at the Little Rock Club or somewhere for drinks after work," Hubbell remembered later. "He would tell me about the sales that were going on of the IDC property, who was buying them, and how much commission he was making." Hubbell 8/22/96 GJ at 49; see also Hubbell 8/22/96 GJ at 102 (discussing the pay off of "the big note, the million dollar note" and the left over $70,000).

[811] Hale 2/6/97-12/4/97 Int. at 2-3. The Independent Counsel's investigation developed

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D. March 1986 Federal Examination and Attempted Cover-Ups; The McDougals Were Removed by Federal Regulators.

1. Examiners Looked at Castle Grande and Other Land Deals.

FHLBB examiners arrived at Madison Guaranty on March 4, 1986, and immediately focused on sales to insiders, including Castle Grande.[812] An internal FHLBB memorandum circulated before the examination began shows examiners were looking at "conflict of interest/prohibited transactions," and whether the institution had complied with the six percent direct investment limitation, net worth requirements, and the 1984 Supervisory Agreement.[813] Sources had already told the FHLBB there was illegal insider activity at Madison Guaranty.[814] After staying for several months, examiners uncovered massive fraud, leading federal regulators to require Madison Guaranty to remove the McDougals and John Latham from control.

a. Ward Demanded His "Commissions"; Cross Loans Were Executed to Conceal them from Examiners.

In March 1986, shortly after federal examiners arrived at Madison Guaranty, "Ward began to talk about being paid his sales commissions for his participation in the Castle Grande acquisition,"[815] telling Madison Guaranty President John Latham he wanted his "commissions"

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no evidence to corroborate Hale's statement in this regard.

[812] J. Clark 7/13/96 Int. at 1.

[813] Inter-Office Memo from Steve Paar, examiner, Federal Home Loan Bank Board, to Examiner-in-Charge (Feb. 24, 1986) (Doc. Nos. 99-00022808 through 22810).

[814] Undated notes from meeting between FHLBB and confidential source [redacted to protect identity of source] (Doc. Nos. 005619 through 5620).

[815] Denton 8/20/96 GJ at 52.

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paid immediately.[816] Ward warned Denton he would "sue the bastards" if he was not paid.[817] Denton later said Ward requested "[s]omething in approximately $300,000, which I understood to be 10% sales commission."[818] "He wanted his commissions," Webb Hubbell agreed, "[t]hat was first and foremost on his mind."[819]

Under the original September 24, 1985 agreement, Madison Financial owed Ward commissions for the sales of that part of the Castle Grande property held in Ward's name.[820] But Madison Financial did not have enough money to pay Ward.[821] Madison Guaranty had money, but Madison Financial was the entity that owed Ward his "commissions."[822] Madison Guaranty could not lend Madison Financial the money because that would violate the six percent limitation on investment by Madison Guaranty in its service corporation.

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[816] Latham 6/8/88 Depo. at 9, Ward v. Madison Guaranty, No. 87-7580 (E.D. Ark) (Doc. No. 140-00019053); Ward 2/12/96 Senate Whitewater Comm. Depo at 36 ("I demanded that I get -- be paid my commission. And I was told that -- by John Latham, that Madison Financial Corporation was not in a financial position at that time to pay me").

[817] Denton 9/6/96 FDIC-OIG Statement at 2; see also Tr. at 234, Ward v. Madison Guaranty, No. 87-7580 (E.D. Ark.) (testimony of John Latham) (Doc. No. 341-00004145) ("Q. And, when Seth Ward was complaining about needing money from Financial for what they owed him, then you worked out a deal where Guaranty stepped in and made available some funds to him, didn't you? A. That's correct").

[818] Denton 8/20/96 GJ at 53.

[819] Hubbell 8/22/96 GJ at 50.

[820] That Madison Financial would pay commissions to Ward was unusual because Ward was not involved in sales of Castle Grande property. Jim McDougal had arranged both the Fulbright and the Castle Sewer and Water sales. Denton 8/20/96 GJ at 54-55.

[821] Id. at 54; see also Tr. at 222, Ward v. Madison Guaranty, No. 87-7580 (E.D. Ark.) (testimony of John Latham) (Doc. No. 341-00004133); Ward 2/12/96 Senate Whitewater Comm. Depo. at 36 (indicating that Latham told Ward that Madison Financial did not have the funds to pay Ward); Latham 8/20/96 GJ at 25.

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Federal examiners began examining the relationship between Ward, Castle Grande, and Madison Guaranty. One of the first aspects of Castle Grande examiners questioned was the $1.15 million loan that Madison Guaranty had given Seth Ward for his portion of the purchase price from IDC. On March 31, 1986, examiner Darlene Ford, requested the Seth Ward loan file.[823] She was told the file was checked out to a Madison Guaranty employee and could not be found.[824] The next day, April 1, 1986, lead examiner Jim Clark, began looking into the IDC transaction and the $1.15 million non-recourse loan to Ward. Madison Guaranty did not have copies of disbursement checks, so Ford contacted Beach Abstract on April 1, 1986, and asked Dennis Nelson for copies.[825] Beach Abstract, which did substantial business with Madison Guaranty, resisted providing copies of the checks, telling Ford and Clark that copies could not be produced without Ward's prior consent and approval.[826] Clark had several conversations with Nelson in an attempt to obtain copies of checks.[827]

Madison Guaranty decided to advance Ward his "commissions" by having Madison

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[822] Denton 8/20/96 GJ at 62.

[823] FHLBB Examiner D. Ford's notes (Mar. 31, 1986) (Doc. No. 99-00042727).

[824] Id.

[825] FHLBB Examiner D. Ford's notes (Apr. 1, 1986) (Doc. No. 99-00042768); Clark 7/26/96 Int. at 2.

[826] Beginning on April 1, 1986, Ford and Clark's handwritten notes describe telephone conversations with Nelson of Beach Abstract and his refusal to provide the IDC checks without Ward's approval. FHLBB Examiner D. Ford's notes (Doc. No. 99-00042768); FHLBB Examiner FHLBB Examiner J. Clark's notes (Doc. Nos. 99-00042769 through 42771); Clark 7/26/96 Int. at 2.

[827] Clark 7/26/96 Int. at 2.

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Guaranty "loan" him money until Madison Financial could pay him.[828] On March 31, 1986 (the same day Darlene Ford asked to see the Seth Ward loan file), Madison Guaranty officials created two loan notes that connected Seth Ward and Madison Financial. The intent was to get cash into Ward's hands and to document Madison Financial's obligation to Ward. The first note, dated March 31, 1986, documented a $400,000 loan from Madison Guaranty to Ward.[829]

On March 31 and April 1, 1986, Madison Guaranty fulfilled the new Ward loan with two checks to Ward for $300,000 and $100,000.[830] The loan represented Ward's Castle Grande "commission."[831] The terms of the note said the "loan" carried a 12 percent interest rate and would become due May 30, 1986.[832] The note was secured by Holman Acres,[833] even though under the original September 24, 1985 agreement, Madison Guaranty already had the legal right to purchase that property for the unpaid balance of Seth Ward's earlier $1.15 million loan -- which then was $70,000.[834]

A second note, also dated March 31, 1986, documented a $400,000 loan from Seth Ward

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[828] Denton 8/20/96 GJ at 59.

[829] Loan Documentation from Madison Guaranty S & L to Seth Ward (Mar. 31, 1986) (Doc. No. 56-00125991).

[830] Cashier's Check No. 4224 from Madison Guaranty payable to Seth Ward for $300,000.00 on "loan #4027-50"; Cashier's Check No. 4228 from Madison Guaranty payable to Seth Ward for $100,000.00 on "loan #4027-50" (Apr. 1, 1986) (Doc. No. 56-00125995).

[831] Latham 8/20/96 GJ at 25-27.

[832] Extension Agreement (May 30, 1986) (Doc. No. 56-00125994) (extending due date to Nov. 30, 1986).

[833] Loan from Madison Guaranty to Seth Ward (Mar. 31, 986) (Doc. No. 56-00125991).

[834] Letter from Seth Ward to Jim McDougal (Sept. 24, 1985) (Doc. Nos. 99-00035000-01 341-00004332 through 4333).

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to Madison Financial.[835] Madison Financial never actually received $400,000 from Ward,[836] because, as John Latham later said, the whole purpose was merely to establish or "document" Madison Financial's obligation to pay Ward's commissions.[837] The loan was never listed as a liability or as accrued commissions on Madison Financial's books, which would have been a subject of the examiner's scrutiny. The loans are referred to as "cross loans" because Ward's $400,000 obligation to Madison Guaranty was intended to offset exactly Madison Financial's corresponding $400,000 obligation to Ward.[838] Ward testified that the purpose of the unfunded note from Madison Financial to him was to insulate him from being liable for principal and

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[835] Loan documentation from Seth Ward to Madison Financial (Mar. 31, 1986) (Doc. No. 56-00125991).

[836] Denton 8/20/96 GJ at 61.

[837] Latham 8/20/96 GJ at 26-27. Hillary Clinton had billed Madison Guaranty for a "telephone conference with John Latham" on March 21. In 1995, she testified that she had "no recollection of any conversation with him at all." H. Clinton 4/22/95 Depo. at 5. In addition to the March 21, 1986 conference between Mrs. Clinton and John Latham, the billing records reveal that Mrs. Clinton billed Madison Guaranty for other conferences with John Latham on April 23, 24, and 26; July 24, and September 20, 1985. Rose Billing Records (May, Aug., & Nov. 1985) (Doc. Nos. DEK014942, 014978, 014991). Latham said the note was intended to demonstrate Madison Financial's obligation to pay Ward his commissions "should something happen to the people that, you know, were cognizant of this . . . . We structured this note as evidence of that debt." Tr. at 222, Ward v. Madison Guaranty, No. 87-7580 (E.D. Ark.) (testimony of John Latham) (Doc. No. 341-00004133).

[838] Madison Financial Board of Directors Resolution (Apr. 4, 1986) (Doc. No. 396-00000527). The loan is reflected in John Latham's calendar for April 3, 1986: "Don -- . . . [illegible - sv corp?] loan to Seth . . . 70k + int note to Seth [illegible] 145 street property [illegible]." Latham's calendar (Apr. 3,1986) (Doc. No. 038342); see also Denton 8/20/96 GJ at 60 (explaining the purpose of the unfunded note was to protect Seth Ward because, without the unfunded note, "if Madison did not pay Seth the money, then Seth could conceivably have to repay the other loan that Madison had made him").

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interest on the $400,000 loan he received from Madison Guaranty.[839]

Don Denton directed the preparation of the $400,000 cross loans[840] and later said Madison Guaranty's $400,000 loan to Ward was "a loan to pay Ward his commissions due from the sale of Castle Grande real estate. Ward had commissions of $300,000 due. The balance of $100,000 was to pay a $70,000 note that . . . was the deficiency from the repayment of the original $1,150,000."[841] Denton remembered "the other $30,000 was to pay interest on those two obligations until they were paid by Madison."[842]

b. On April 7, 1986, the Original Cross Notes Were Replaced; Denton's April 7, 1986 Telephone Conference with Mrs. Clinton.

On April 7, 1986, the March 31, 1986 cross loans were replaced with new notes. The original note from Ward to Madison Guaranty for $400,000 was replaced with another note for $400,000.[843] The $400,000 loan note from Ward to Madison Financial was replaced by two

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[839] Tr. at 150-51, Ward v. Madison Guaranty, No. 87-7580 (E.D. Ark.) (Doc. No. 341-00004060-62) (testimony of Seth Ward). Hubbell admitted in 1996 that he spoke contemporaneously with Ward about the cross loans. Hubbell 8/22/96 GJ at 52-55.

[840] Denton 8/20/96 GJ at 55-56.

[841] Id. at 58.

[842] Id. at 58-59. In his Ward v. Madison Guaranty deposition, Denton expressed some doubt about what he knew about the cross loans and when he knew it. Denton said he prepared the cross loans as ordered by Latham. He also said the information in a memorandum to Latham explaining the cross loans may have included some speculation ("I sure was giving a lot of opinions without a lot of information wasn't I? These damn memos -- would you strike that?") Denton 5/24/88 Depo. at 64, Ward v. Madison Guaranty, No. 87-7580 (E.D. Ark.); see Memo from Denton to Latham (July 14, 1986) (Doc. No. DD000000052).

[843] Loan from Madison Guaranty to Seth Ward (Mar. 31, 1986) (Doc. No. 56-00125991).

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separate notes: one for $300,000 and the other for $70,943.47.[844] The amounts corresponded to Denton's understanding of how the $400,000 loan from Madison Guaranty to Ward was structured. He understood that $300,000 corresponded to Ward's commissions, and $70,943.47 corresponded to the amount remaining outstanding from Ward's loan to purchase the IDC property plus interest up to April 7, 1986 (the amount carried over into a new note on February 28, 1986). After April 7, 1986, there were now three active promissory notes related to Ward's role as IDC/Castle Grande straw purchaser: 1) the $400,000 note from Ward to Madison Guaranty reflecting the funds he had received; 2) the unfunded $300,000 note from Madison Financial to Ward; and 3) the unfunded $70,943.47 note from Madison Financial to Ward.

On April 7, 1986, Don Denton also received a telephone message from Sandra Moody, Hillary Clinton's secretary, asking Denton to call Mrs. Clinton.[845] Rose billing records for April 7, 1986, show a conference call between Mrs. Clinton and Denton about the IDC matter.[846] The computerized Rose billing memorandum reflects an entry for Mrs. Clinton on the IDC matter on April 7, 1986, for 0.2 hour for "Telephone conference with Don Denton,"[847] which was edited by hand to 0.5 hour.[848]

When FDIC Inspector General investigators questioned Denton on June 3, 1996, about

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[844] Ward $300,000 "loan" to Madison Financial (Apr. 7, 1986) (Doc. No. 56-00126454); Ward $70,943.47 "loan" to Madison Financial (Apr. 7, 1986) (Doc. No. 396-00000525).

[845] Telephone message slip to Don Denton (Apr. 7, 1986) (Doc. No. DD-00000241).

[846] Rose Billing Records (Mar. 1986) (Doc. No. DEK015030).

[847] Id.

[848] Id.

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the April 7, 1986 billing entry, Denton could not remember the call:

> DENTON was questioned concerning a ROSE billing entry that indicated that he spoke with CLINTON on April 7, 1986 relative to the IDC matter. DENTON said that he had no recollection of the call, and believed that the entry may have been in error. He said that there was an April 1, 1986 telephone message from CLINTON to him that he had maintained, but that he did not recall what the purpose of that call was.[849]

On June 11, 1996, Denton told investigators that reviewing a copy of Rose billing records had caused him to remember the April 7, 1986 conversation with Mrs. Clinton, which he said dealt with Seth Ward's cross notes. Denton "said that since the earlier [June 3, 1996] interview, he had recalled that he did have a conversation with CLINTON concerning WARD loans at MGSL."[850] The memorandum of interview also said

> DENTON was questioned concerning his recollection of this phone call at this time. He said that after the earlier interview, he reviewed a copy of the ROSE LAW FIRM billing records that he had obtained from the media. He said that after confirming to himself that there was a bill by CLINTON for a discussion with him concerning IDC on April 7, 1986, he gave the matter thought and also reviewed the documents that he had retained.
>
> He said that when he reviewed the documents, he found a copy of the March 31, 1986 note from WARD to MFC that had handwriting on it, dated April 7, 1986, indicating that the note was replaced by a $300,000 and $70,943 note. He also reviewed two notes dated April 7, 1986 for those amounts that he had left handwritten messages on that said "Replacement notes - 5-5-86 (the $300,000 note), and "Copies of new note -- Signed 5-5-86 (the $70,943 note).
>
> He said that he noted that the May 5, 1986 dates match the date of the option for WARD property at 27 and 28 Holman Acres, the property that secured loan #4027.

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[849] Denton 6/3/96 FDIC OIG Int. at 10 (uppercase in original).

[850] Denton 6/11/96 FDIC OIG Int. at 2.

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DENTON said that, after reviewing these documents and giving the matter some thought, he recalled the telephone call with CLINTON. DENTON could not recall where he obtained the copies of the replacement notes or who or when they were prepared.[851]

Denton remembered telling Mrs. Clinton "there could be a problem with the notes as they constituted in effect a parent entity fulfilling the obligation of a subsidiary."[852] He said Mrs. Clinton "summarily dismissed" his concern in a way he understood meant she wanted him to manage thrift matters, and she would manage legal matters.[853]

In August 1996, Denton told the grand jury about his telephone call with Mrs. Clinton:

Q. Tell the ladies and gentlemen of the grand jury what happened when you called Sandra in Hillary Clinton's office back.

A. I returned the call and was immediately connected with Hillary Clinton. We exchanged a couple of hellos, how are you, the conversation was very short. I was told that she was working on a transaction involving Seth Ward and Madison Financial, and that she was [seeking] information so she could document the obligation that Madison owed Seth. In other words, the $400,000 obligation. She understood that Seth had been loaned the 400 by Madison Guaranty Savings & Loan. And she was working on a transaction that would document Madison Financial's obligation to pay . . . Seth Ward his commissions.

Q. What type of document was she talking about?

A. She was talking about a promissory note.

Q. So what was your response to what she was saying?

A. I cautioned her that the Madison Financial obligation was not a direct set-off or direct tie to Madison Guaranty's loan. I pointed out that Madison

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[851] Denton 6/11/96 FDIC OIG Int. at 3-4 (uppercase in original).

[852] Id. at 3.

[853] Id.

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Guaranty had loaned Seth the money, but Seth was owed money by Madison Financial Corporation. She rather summarily dismissed my concerns and indicated that she'd take care of the lawyering.

Q. What happened after that?

A. I informed her that the $400,000 note from Madison Financial -- excuse me -- from Madison Financial to Seth had already been prepared. And she asked that we supply a copy of that note, which I did. I had an employee of Madison deliver that note.

Q. To whom?

A. To the Rose Law Firm.

Q. And then also the note that you had prepared, was it the first note on April -- pardon me -- on March 31st, or was it a note drafted on that day, April 7th?

A. I don't recall which it would have been. It was--as I recall, it was the $400,000 note. I'll note now that the replacement notes were also dated April 7th, so I don't recall specifically which ones were delivered.

. . . .

So I think on April 7th, two notes were replaced, the 300 plus the 70, to take care of the remaining $300,000 balance on the original note plus the $70,000 note. And it more clearly identified them. Rather than a total note for 400, it broke it down into two notes, with those specific amounts, the 300 and the 70,000 note.

Q. Did you and Mrs. Clinton discuss that in your telephone call on April 7th?

A. I don't recall whether we did or not.

Q. Your memory is you just discussed the $400,000 note?

A. That was the reason of her inquiry. I may or may not have informed her that the 300 plus the 70 had already been done. I just don't recall now.

Q. Had you ever dealt with Mrs. Clinton before that phone call?

A. I had not.

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Q. Were you surprised that she called?

A. Yeah, I had never spoken with the governor's wife, so I think I was surprised from that standpoint. I did know that she was acquainted with Seth Ward through the Airport Commission. She served as attorney for the Airport Commission, and Seth Ward had been on that commission for a number of years and I believe was chairman at the time. And I knew that Hillary Clinton was a friend, as well as a business associate of Webb Hubbell, Mr. Ward's son-in-law. So I knew they worked together, but that was certainly my first conversation with Mrs. Clinton.

Q. To your knowledge, had Mrs. Clinton represented Seth Ward before?

A. I don't know whether she had or not.

Q. To your knowledge, had Mrs. Clinton represented Madison before that phone call?

A. I have since learned that she did. At the time, I do not believe that I was aware of that.

Q. Who did you believe was Mr. Ward's attorney at that time?

A. Webb Hubbell.

Q. Who did you think that she represented at the time you received the phone call from her on April 7th?

A. Seth Ward.[854]

In 1998, Mrs. Clinton testified that she did not know about the April 7, 1986 billing entry: "From looking at the billing records, it merely states telephone conference with Don Denton. I

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[854] Denton 8/20/96 GJ at 63-67. In a 1996 interview, Denton said he subsequently had a conversation with Seth Ward about Mrs. Clinton's failure to understand the problem the cross notes presented. Denton 6/26/96 Int. at 5. Denton had known Ward since 1977, and could not remember him ever using an attorney other than Hubbell, though Denton did not question Ward about Mrs. Clinton's involvement. Id. at 5.

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believe that it had to do with a matter referred to as Babcock in the billing records."[855] Mrs. Clinton nevertheless acknowledged that the April 7, 1986 billing entry is listed under the "IDC matter," not Babcock:

> A. I can only say that based on the billing records, and based on the information I have seen, if you look at the 4/7/86 entry, which is the 12-minute telephone conference, and yes it was billed to IDC, but I don't think that was correct, because it was followed two days later by an hour and a half conference with Mr. Denton concerning the loan participation that Savers Savings and Loan had that Madison was interested in resolving. And then all of the time on Babcock concerns those loans and Mr. Denton is one of the people that I spoke with and had conferences with.
>
> So, I believe, based on the evidence that I see and the fact that Mr. Denton was involved in this Babcock matter, that that is what that first telephone conference also pertained to.
>
> Q. Why wasn't it billed to number four, General, or some other matter?
>
> A. That's a good question, Mr. Ewing, and as I've looked at these billing records carefully, over the last days, there are a lot of questions I have about that. There are a number of errors, and I attribute it to secretarial, clerical accounting errors. But I think that's where the telephone conference with Mr. Denton rightly belongs.[856]

Mrs. Clinton said she knew nothing about the April 7, 1986 cross loans.[857] She also testified she did not know that federal examiners were then reviewing Madison Guaranty.[858]

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[855] H. Clinton 4/25/98 Depo. at 127. The Babcock matter was a loan workout -- unrelated to IDC -- that Mrs. Clinton worked on for Madison Guaranty with Don Denton's help. Mrs. Clinton billed the Babcock file for 1.5 hours on April 9, 1986, for a conference with Don Denton.

[856] Id. at 126-27.

[857] Id. at 128-29.

[858] Id. at 104.

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c. Examiners Learned about Ward's Compensation for His Role in the IDC Transaction; an Option Agreement Was Used to Conceal the True Nature of the Transactions.

Sometime in April 1986, FHLBB examiners found a copy of the original September 24, 1985 agreement between Seth Ward and Jim McDougal.[859] This agreement had not been produced to the examiners, who already knew about the cross loans to Ward and wanted to determine whether the loans were part of the commission payments to him. This was significant to the examiners because if the loans were commission payments that Madison Financial owed Ward, the $400,000 loan from Madison Guaranty to Ward violated the six percent direct investment limitation by using Madison Guaranty money to fund a Madison Financial obligation. The peculiar documentation for this payment of commissions would violate the federal law requiring Madison Guaranty's records reflect the true nature of its transactions.[860]

i. Clark Questioned Denton, and Denton's False Explanation Created the Need for the Option Agreement to be Quickly Created.

Examiner Jim Clark asked Denton about the cross loans in late April 1986.[861] Clark's notes reflect that Denton falsely told Clark the two loans were unrelated.[862] Denton told Clark the

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[859] Clark and other examiners found the document after normal business hours at Madison Guaranty while searching through some desk drawers. Clark 7/13/96 Int. at 3.

[860] 18 U.S.C. § 1006; see also J. Clark 7/13/96 Int. at 3.

[861] FHLBB Examiner J. Clark's notes (Mar. 4, 1986) (Doc. No. 99-00043209). Even before this conversation, Clark had had concerns about how forthcoming Madison Guaranty was being. He thought that Madison Guaranty was playing games with the examiners; either not providing relevant documents or tampering with the files it gave to them. J. Clark 10/27/94 Int. at 23.

[862] FHLBB Examiner J. Clark's notes (Mar. 4, 1986) (Doc. No. 99-00043209).

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loans to Ward from Madison Guaranty were for business debts and a tax payment.[863] He said the note purporting to be a loan to Madison Financial from Ward was documentation of a previous obligation of Madison Financial to purchase a piece of property (Holman Acres) from Ward.[864] Denton told the examiners the loan would never be funded because they were only using the loan note temporarily while they waited for Ward's attorney (Webb Hubbell) to draw up an option agreement.[865] Denton told Clark he would provide them with a copy of the option when it was done.[866]

This transaction described by Denton to the examiners was inconsistent with Madison Financials' existing contractual rights. Under the original September 24, 1985 agreement, as of February 28, 1986, Madison Financial already had the right to re-purchase Holman Acres from

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[863] Id.

[864] Id.

[865] Id. Denton recorded a similar explanation in a memo to Latham. Memo from Denton to Latham (July 14, 1986) (Doc. No. DD000000052). After the FHLBB meeting in Dallas on July 11 where the FHLBB insisted on the resignations of McDougal and Latham, Latham asked Denton to write several memoranda outlining his understanding of various transactions, including the payment of Ward's commissions. Denton responded in a memo to Latham which recited the commissions owed to Ward and said after Ward was advanced $300,000 by Madison Guaranty:

> In the interim, pending preparation of an option agreement whereby Madison Financial would purchase the northeast corner from Seth, a note was drawn in the amount of $300,000 dated April 7, 1986, payable to Seth Ward, executed by Madison Financial Corporation. This note was later destroyed and replaced by a similar note. An option agreement was drawn dated May 1, 1986, obligating Seth to sell the property to Madison if it so opted. This option was in the amount of $400,000 and I am assuming this would cover the $300,000 note, the $70,000 note, and interest on those two obligations.

Memo from Denton to Latham (July 14, 1986) (Doc. No. DD00000052).

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Ward for the unpaid balance, $70,000, left on Ward's $1.15 million loan. There was no need to enter into another agreement to pay Ward $400,000 for this property.

ii. Hubbell Drafted the April 30, 1986 Employment Agreement for Ward.

In a document ostensibly dated April 30, 1986, Madison Financial and Seth Ward entered into an agreement articulating Ward's purported employment terms at Madison Financial.[867] The agreement said Madison Financial was "engaged in the development and sale of property" and that Ward would "assist in coordinating activities relating to planning, developing, engineering and implementation of roads, buildings, and recreational facilities to be constructed on properties owned by Madison."[868] Ward's "compensation" was described as "a $25,000 year retainer, payable in bi-weekly installments of $961.54 beginning Thursday, May 15, 1986 and such other compensation as agreed to by both parties."[869] The terms required Ward to "make available his services to Madison [Financial] at least six hours a day, five days a week."[870] Jim McDougal, John Latham, and Seth Ward signed the agreement.[871]

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[866] FHLBB Examiner J. Clark's notes (Mar. 4, 1986) (Doc. No. 99-00043209).

[867] Agreement between Seth Ward and James B. McDougal (Apr. 30, 1986) (Doc. No. 027161).

[868] Id.

[869] Id.

[870] Id. By its terms, the agreement was entered into "by and between Madison Financial [C]orporation (hereinafter 'Madison') and Seth Ward (hereinafter 'Ward')." Id.

[871] Id. The date on the employment agreement corresponded to the federal examiners second "as of" date. When the federal examination of Madison Guaranty began on March 3, 1986, the "as of" date of the examination was February 28, 1986. The federal examiners changed the "as of" date to April 30, 1986, "[b]ecause of the length of the examination." FHLBB Office

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iii. May 1, 1986: Mrs. Clinton Billed Madison Guaranty for Preparing the Option Agreement.

Jim Clark told Darlene Ford to follow up on the option agreement referred to by Denton. Ford returned to Denton about the option on Tuesday, April 29, 1986. Her notes reflect that Denton told her they were still waiting for the option.[872] Two days later, on Thursday, May 1, 1986, Mrs. Clinton billed the Madison Guaranty IDC file for two hours for: "conference with Seth Ward; telephone conference with Seth Ward regarding option; telephone conference with Mike Schauffler [sic]; prepare option."[873]

Hubbell said he spoke with Mike Schaufele about the option and Ward's related efforts to collect "commissions" from Madison for Ward's role in the IDC/Castle Grande transactions: "At one time Mr. Ward was trying to have his commissions that were owed, when he got paid, not be ordinary income, but be capital gains, and he talked to Mike about it," Hubbell later said.[874] "I'm

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of Examinations and Supervision, Report of Examination, Madison Guaranty Savings & Loan Assoc., Docket No. 7601 at 7a n.1. Ward and Hubbell discussed the employment agreement. Hubbell 8/22/96 GJ at 104. Hubbell said he "could have" had a role in drafting the employment agreement, although remembering that he told Ward that he "ought to get whatever his deal was in writing." Hubbell 8/22/96 GJ at 104. According to Hubbell, when Ward asked, "Why do you think that?" Hubbell said, "that I felt that it was wise, especially if he was going to be dealing with Mr. McDougal, that he ought to get his agreement in writing." Hubbell 8/22/96 GJ at 104-05.

[872] Ford's notes said: "I [Darlene] talked to Don Denton and he said that the option had not been drawn yet but he would give it to us. He said the notes will never be funded." FHLBB Examiner D. Ford's notes (Apr. 29, 1986) (Doc. No. 99-00043209). Ford documented an April 29, 1986 conversation with Denton in which Denton said "the option had not been drawn." Ford 7/29/96 Int. at 2.

[873] Rose Billing Records (May, 1986) (Doc. No. DEK015031). The reference to "Mike Schauffler" apparently refers to Seth Ward's accountant, Mike Schaufele.

[874] Hubbell 8/22/96 GJ at 90.

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not a tax lawyer. And Mike told me that, actually, there was a way to do it, using an option. I remember that part of it. Again, I couldn't set it up. I didn't have any idea how to do it, but Mike said it was possible."[875] When shown the May 1, 1986 option agreement, Hubbell said he was not sure whether it was the option agreement he discussed with Schaufele, but said, "I suspect it is."[876] The option was signed for Madison Financial by Latham and notarized on May 12, 1986.[877] Latham later testified that the March 31, 1986 $400,000 loan to Ward "was done really at that time in lieu of the option."[878] The May 1, 1986 option, he said,

> more concretely or more accurately reflects the nature of the transaction, that being that the service corporation owed Seth $300,000 in commissions. In the initial purchase of all of that property, Seth retained tracts 27 and 28 of Holman Acres as his commission, which was later to be bought by the service corporation. The option allows the service corporation to buy the property from Seth, thus Seth receives the $300,000, and the service corporation would have the property."[879]

Latham also testified, explaining why the note was for $400,000:

> Q. Now, you've testified that the note was to evidence -- the note given by

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[875] Id.

[876] Id. at 91; see also id. at 94 ("I don't know. I mean, Seth usually told me about his business, and that's why I'm hesitant, but I don't remember the option"); id. at 93 ("Q. Did you ever talk to your father-in-law about that option around that period of time, or in 1986? A. I'm sure I did, but the specifics I'm not sure because, like I said, later on, my understanding of the option and the notes all related to the commissions, and I was told I was wrong on that, okay?"); and id. ("I mean, I had conversations with Mike, okay, about the option, and I've had conversations with Seth, but on that day that she billed for, I don't believe so").

[877] Option to Purchase Real Estate (May 1, 1986) (Doc. Nos. 99-00043196 through 43208).

[878] Tr. at 223, Ward v. Madison Guaranty, No. 87-7580 (E.D. Ark.) (testimony of John Latham) (Doc. No. 341-00004134).

[879] Id.

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MFC to Ward was evidence of $300,000; the option was to effectuate the intent, which was to purchase tracts 27 and 28 [Holman Acres] from Mr. Ward for $300,000. Then Mr. Ward would have the money, and Madison Financial Corporation would have the land; is that correct?

A. Yes, that's correct.

Q. Now, the option is in the amount of $400,000. Do you know why it's taken for $400,000?

A. No, other than when it was drawn up it may have been to offset the note, which was also for $400,000. I believe at the time the balance on the note was 300,000, that 100,000 had been paid off, the 300,000 remaining being -- what I remember as being the amount of the commissions. That would be the only thing I could think of on the option.[880]

Don Denton's testimony corroborated Latham:

Q. Did you discuss the option agreement with Seth Ward?

A. Yes.

Q. Do you remember what you talked about with him?

A. Yes. The intent of the option was to document the fact that Seth Ward was going to sell that property to Madison Financial in the future. And it was my understanding from talking with Ward that when he sold that property, he would take the money that he received from that sale and pay back Madison [Guaranty] on the earlier March 31st loan.

Q. So the option agreement was very closely related to the payment to Mr.

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[880] Id. at 224 (testimony of John Latham) (Doc. No. 341-00004135); see also id. at 229 (Doc. No. 341-00004140) ("Q. And shortly after [the March 31, 1986 $400,000 loan from Madison to Ward] was executed Mr. Ward paid back $100,000 of that loan, did he not? A. I believe that's correct. Q. Within a matter of perhaps a week? A. I think that's correct"). According to a July 14, 1986 memo from Don Denton to John Latham, Ward returned $100,000 on April 23, 1986. Memo from Denton to Latham (July 14, 1986) (Doc. No. DD000000052). McDougal did not remember anything about the drafting of the option agreement. McDougal said he was in a manic state and let Latham handle all of the mechanics of the transaction. J. McDougal 8/96-6/97 Int. at 19.

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Ward of his commissions?

A. Yes. It was to -- the option was to document how Ward was to receive the money to repay his loan to Madison Guaranty Savings & Loan.

Q. Did you discuss the option agreement with Mr. Latham?

A. Yes.

Q. Tell us about that discussion.

A. Generally, the same understanding that the original March 31st loan and the renewals were done on April 7th in the amount of $300,000 plus 70. That those loans would be repaid when Madison bought the property from Seth, which was covered under the option. The money then would go to repaying Madison [Guaranty's] loans that Seth owed.[881]

Denton gave a copy of the option to examiner Darlene Ford on May 7, 1986.[882] Ford reviewed the legal description of the property and noticed that it was wrong.[883] The option did not refer to Holman Acres, but rather to the property that Davis Fitzhugh purchased on February 28, 1986.[884] Ford pointed out the erroneous description to Denton, who had the first two pages of

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[881] Denton 8/20/96 GJ at 68-69. The parties never exercised the option. Ward eventually simply returned Holman Acres to Madison Guaranty, with Hubbell's help, by means of a December 1986 quitclaim deed, as a means of avoiding repayment of the outstanding non-recourse loans that this parcel secured.

[882] Copy of option with Ford's handwritten notes (May 1, 1986) (Doc. No. 99-00043196 through 43201).

[883] Ford 7/29/96 Int. at 2-3.

[884] This same property description appears on an attachment to a release deed given to Seth Ward by Madison Guaranty dated December 30, 1985. Martha Patton, Webb Hubbell's secretary at Rose, said she believes that she typed the attachment. Patton 9/25/96 Int. at 2. The incorrect legal description used in the option pertained to the property purchased by Davis Fitzhugh, which was prepared by Edward G. Smith & Associates on or before March 31, 1986. See Little Rock South Industrial Park NE Corner Legal Description (Mar. 31, 1986) (MGSL-FR-00000028). This identical legal description appeared in a release deed given by Madison

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the option re-typed to accurately describe Holman Acres as the subject property.[885]

iv. Mrs. Clinton Drafted the Option Agreement.

Mrs. Clinton testified that she did not think she drafted the May 1, 1986 option agreement "from scratch":

> Q. Mrs. Clinton, we -- the bank examiners were in the bank during this time. There is evidence that there were these cross loans where Mr. Ward was advanced monies by Madison, but to cover the obligation, he then on paper loans money back to Madison, but it was not funded. That later, on May 1st, '86 there was an option agreement put in place of this document.
>
> Now, we know now that you apparently drafted the option agreement that took the place of this document here.
>
> A. I don't believe I drafted the option agreement [.]
>
> Q. But you billed for it?
>
> A. It, it was billed for. That is correct, along with several other activities in a two-hour period on May the 1st.
>
> Q. Did you actually bill the client and list on the records of your law firm, draft option agreement?

Financial to Seth Ward. The parties had failed to release the Fitzhugh property from Ward's mortgage on the $1.15 million loan. A partial release deed, with a legal description as a separate page, was prepared on December 30, 1985. Partial Release Deed granted to Ward by Madison Guaranty (executed Dec. 12, 1985) (Doc. Nos. 105-00046413 through 46414).

[885] Ford's notes on the option she received from Denton state: "Talked to Don Denton. He said that this land description goes with the Fitzhugh mortgage property and that this description is in error. He said it should be the property known as Tract 27 and 28 of Holman Acres on which Ward (unintelligible)." FHLBB Examiner D. Ford's notes (May 1, 1986) (Doc. No. 99-00043196); see also Ford 7/29/96 Int. at 2-3; Clark 7/26/96 Int. at 2-3. Denton had the first two pages of the incorrect option re-typed. Denton 6/26/96 Int. at 5. The corrected version of the option retyped at Denton's direction is referenced with Doc. No. 99-00043202; see also Denton 8/20/96 GJ at 70 (discussing the retyping of the first two pages of the May 1, 1986 option agreement).

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A. Draft option agreement is what that says [on the billing records], that's right. But I do not believe I drafted that option agreement from scratch. That would not be something I would do.[886]

Documentary evidence established that Mrs. Clinton did participate in the drafting of the option agreement. First, Mrs. Clinton billed Madison Guaranty for doing so.[887] Second, the document bore her unique Rose computer code.[888] Third, Mrs. Clinton once had a file labeled "Ward Option," which she ordered to be destroyed in July 1988, along with her other Madison Guaranty files.[889]

Hillary Clinton said it was not unusual for Ward to stop by Rose and demand that a piece of legal work be taken care of immediately.[890] This supported the inference that after Ford's follow-up request for the option on April 29, 1986 (Tuesday), Ward went to Rose in person on May 1, 1986 (Thursday). "Ward's attorney [Hubbell]" was out of town or unavailable -- Hubbell

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[886] H. Clinton 4/25/98 Depo. at 129. Seth Ward testified that he did not remember discussing the option (either the May 1 version or the corrected May 7 version) with Mrs. Clinton, though he may have. Ward 2/12/96 Senate Whitewater Comm. Depo at 49; see also Ward 2/12/96 Senate Whitewater Comm. Depo at 53 ("I do not remember Mrs. Clinton being involved"). Ward 1/17/96 GJ at 82. Because Ward always spoke of Hubbell when discussing IDC matters, it was McDougal's opinion that Hubbell probably prepared the option agreement and that Mrs. Clinton had no involvement in it. J. McDougal 8/96-6/97 Int. at 16.

[887] Rose Billing Records (May, 1986) (Doc. No. DEK015032) (among items for two hour block was "prepare option").

[888] See Option to Purchase Real Estate at 3 (May 5, 1986) (Doc. Nos. 010996 through 11001). In the bottom-right corner is the code "0190g" which was Mrs. Clinton's word processing code. FDIC-OIG Supplemental Report on Rose Law Firm Conflicts of Interest at 43-44, WA-94-0016 (Sept. 20, 1996).

[889] Memo from Mary Russell, Rose File Clerk, to Mrs. Clinton at 2 (July 21, 1988) (Doc. No. FDICHRC 0163).

[890] H. Clinton 2/14/96 FDIC Int. at 13.

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was then in trial against Jim Guy Tucker.[891] Ward appears to have asked Mrs. Clinton to prepare the option in Hubbell's absence. Mrs. Clinton either drafted or participated in the drafting, after making phone calls to both Ward and his accountant, Mike Schaufele (as noted, Ward was concerned about the tax treatment of his arrangement with Madison).[892]

v. The Option Concealed the True Nature of the Transactions from Examiners.

Federal examiners Jim Clark and Darlene Ford said the existence of the option hindered their investigation.[893] A memorandum of an interview with Clark read:

> WARD's status as a straw purchaser allowed MGS&L to evade the 6% investment limitation in MFC; management made a valiant effort to hide this and used the option agreement to hide WARD's commission payment. CLARK only learned that WARD's $400,000 loan was really commission after reading LATHAM's trial testimony in WARD's lawsuit against MGS&L [in 1988]. CLARK now concludes that WARD's commission payment was a "sham" to disguise WARD's straw man involvement in the IDC transaction. In the end, the option agreement seemed to support the idea that WARD's $400,000 loan was unconnected to the cross loans, when, in fact, the commission payment disguised as a loan was really a direct investment in MFC. The option successfully threw the examiners off the trail of the cross loans and they never did connect payment of WARD's commission to WARD's $400,000 loan.[894]

Although Clark and Ford were suspicious of the cross loans and the option, the existence

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[891] See Tucker 3/18/98 GJ at 187 ("He [Hubbell] couldn't have done it -- he couldn't have spent much time that day because he was in trial with me. And I mean, this was a very complex trial. And maybe he could have broken to do something totally different, but I would be surprised -- very surprised if he could have"). Jim Guy Tucker and Hubbell had also been out of town in depositions many times prior to the start of the trial.

[892] Schaufele had no memory of his discussion with Mrs. Clinton on May 1, 1986. Schaufele 1/30/96 GJ at 28-29.

[893] Ford 7/29/96 Int. at 2-3; Clark 7/13/96 Int. at 3-4; and Clark 7/26/96 Int. at 3-4.

[894] Clark 7/26/97 Int. at 3-4.

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of an option was concrete documentary evidence supporting Madison Guaranty's claim that the cross loans were unrelated to the original September 24, 1985 agreement. The option supported the story Madison Guaranty officials told the examiners -- the unfunded April 7, 1986 note was intended to document Madison Financial's intention to purchase Holman Acres from Ward.

The FDIC-OIG later concluded that:

> [E] ntries in the billing materials and other evidence suggest that former Rose Law Firm Partners Hillary Rodham Clinton and Webster L. Hubbell performed work that appears to have facilitated the payment of substantial commissions to Ward, who acted as a straw buyer for Madison Financial in the IDC transaction. . . . The method of payment of commissions evaded regulations designed to protect the safety and soundness of the institution, and violated the integrity of its books and records. Further, Madison Guaranty used a document drafted by Clinton to deceive Federal bank examiners as to the true nature of the payments to Ward.[895]

Whether the option was exercised or not, its existence was intended to deceive the examiners, and it did so. Ward was paid over $380,000 for his role in the IDC transaction at a time when the institution was in financial distress. The option concealed these payments from examiners who were then looking at whether Madison Guaranty had violated the direct investment limitation by having Madison Guaranty pay obligations owed by its service corporation, Madison Financial. The option played a key role in deceiving the examiners into accepting Madison Guaranty's explanations the loans to Ward were unrelated to his commissions.[896] Mrs. Clinton's statements about the option agreement are discussed in Chapter 3

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[895] FDIC-OIG Supplemental Report on Rose Law Firm Conflicts of Interest, WA-94-0016 at ii-iii (Sept. 20, 1996).

[896] That Madison Guaranty management had misrepresented the purpose of the cross loans to examiners was made clear by subsequent statements and testimony of Madison Guaranty personnel. In a July 22, 1986 memorandum to Don Jack, Latham's attorney, Latham said 1)

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of this Part.

2. The Evidence of Wrongdoing Uncovered by the Examiners Ultimately Led to an Order Requiring McDougal and Others to Resign; Mrs. Clinton Returned the Madison Guaranty Retainer.

a. Examiners Submitted Interim Reports That Criticized Madison Guaranty.

Federal examiners continued their examination, but cooperation from Madison Guaranty management became strained. Jim Clark submitted his sixty-day interim report to Rolf Coburn on May 8, 1986.[897] Clark and the examiners thought that Madison Guaranty's management was obstructing their investigation, providing evasive answers to questions, and manipulating the institution's files in response to specific inquiries. The report said its conclusions had not been discussed with Madison Guaranty management, in part, because Clark was "concerned that management will use the information gained on the specific direction of the investigation to hide, destroy, or otherwise limit our access to crucial records."[898] The report was critical of Madison Guaranty and said the investigation of just three of Madison Guaranty's real estate projects -- Maple Creek Farms, Castle Grande, and Twelfth and Main -- had resulted in losses exceeding Madison Guaranty's entire net worth.[899] The report stressed that Madison Guaranty's problems

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Ward's loans and the May 1, 1986 option were related; and 2) Madison Guaranty's records were manipulated to deceive the examiners. Latham wrote the memorandum just one week after the FHLLB forced him to resign from Madison Guaranty. See Memo from John Latham, Madison Guaranty Executive Vice President to Don Jack, Latham's attorney (July 22, 1986).

[897] Sixty-Day Interim Report (May 8, 1986) (Doc. Nos. 99-00038802 through 38817).

[898] Id. at 1 (Doc. No. 99-00038802).

[899] The report said as of March 31, 1986, the total investment in the three projects was $10,602,000. Of this, the examiners considered $2,728,000 a loss and the remainder

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stemmed from "straw" transactions and land "flips" to insiders, and accused Madison Guaranty management of using the Castle Grande development to generate fictitious profits for Madison Financial by using arbitrarily low cost allocations to generate high profits on initial sales "leaving high costs and large losses for future sales as in Maple Creek."[900]

b. Non-Recourse Agreements Were Executed as "A Way of Protecting Seth's Interest"; Madison Guaranty Lent Seth Ward an Additional $93,000.

In documents bearing the date June 6 and June 9, 1986, but which were backdated, John Latham and Seth Ward executed three non-recourse agreements.[901] The first two non-recourse agreements, dated June 6, 1986, modified Seth Ward's Castle Grande loans (the $70,000 February 25, 1986, and $400,000 March 31, 1986 loans) and relieved him of personal liability for

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substandard. Madison Guaranty's entire net worth as of March 31, 1986 was only $2,371,000. Id. at 2 (May 8, 1986) (Doc. No. 99-00038803).

[900] Id. at 10 (Doc. No. 99-00038811).

[901] June 6, 1986 was the maturity date on the $70,000 February 25, 1986 loan. The loan note was originally dated June 9, 1986, but it was altered by hand to read June 6, 1986. Don Denton said loan numbers at Madison were computer generated such that higher loan numbers came later in time than lower loan numbers. Accordingly, the renewal loan, loan 4221, issued after 4215. Because loan 4215 issued on June 10, 1986, loan 4221 must have issued on or after June 10, 1986. See FDIC-OIG 9/20/96 Supp. Rep. at 4 n.4; Loan no. 4215-76 (June 10, 1986) (Doc. No. SEN33180); Denton 9/6/96 FDIC-OIG Statement at 6-7. Don Denton said: "since #4221 was a renewal of loan #3359 [the $70,000 February 25, 1986 loan], it is likely that it was backdated to the date of maturity of the note being replaced. When advised that #3359 had not reached maturity, DENTON said that he believed that since #3359 was unsecured, the renewal was done to secure the loan with the Holman Acres property which could then be returned to the institution in lieu of repayment." Id. at 7. Additionally, "DENTON said that MGSL's loan numbers were computer generated and 'not manipulable.' DENTON said that loan #4221, dated June 6, 1986, 'could not have occurred before a note' with an earlier number." Id. at 6.

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them.[902] The effect of the release agreements was to benefit Seth Ward (to the detriment of Madison Guaranty) by converting his outstanding loans from recourse to non-recourse loans. If Seth Ward did not repay the two loans (which he did not), Madison Guaranty could recover only Holman Acres to satisfy what he owed, and could not seek recovery from him individually.

On approximately June 9, 1986, Madison Guaranty lent Seth Ward another $70,000 to pay off his February 25, 1986 $70,000 loan.[903] Holman Acres served as collateral for this second $70,000 loan, and another release agreement made the second loan non-recourse, secured only by Holman Acres.

Additionally, Madison Guaranty lent Seth Ward $93,000 on June 10, 1986,[904] which he did not repay. This was apparently unrelated to the Castle Grande property. Ward deeded Holman Acres to Madison Guaranty rather than repay his $300,000 and $70,000, and the $93,000 was involved in Ward's subsequent lawsuit against Madison Guaranty. The June 1986 release agreements enabled Seth Ward to avoid any personal liability for the losses Madison Guaranty

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[902] Latham 8/20/96 GJ at 46. The amendments to the loans are somewhat inaccurate in that some of them refer to the original $400,000 loan dated March 31, 1986, which was replaced with the new notes on April 7, 1986. Nevertheless, in a document dated June 6, 1986, Latham and Ward executed two amendments relieving Ward of personal liability on loan no. 4027-50 in the original amount of $400,000 (Doc. No. 56-00125991), and loan #3359-76 in the original amount of $70,000 (Doc. No. 396-00000534). In a document dated June 9, 1986, Latham and Ward executed an amendment relieving Ward of personal liability on loan no. 4221-50 in the original amount of $70,000 (Doc. No. 396-00000533).

[903] The loan note (loan no. 4221) said the interest rate on this loan was 10.5 percent. Loan Documentation from Madison Guaranty to Seth Ward (June 9, 1986) (Doc. No. 396-00000532).

[904] Loan documentation from Madison Guaranty to Seth Ward (June 10, 1986) (Doc. No. 341-00004355).

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incurred as a direct result of his failure to repay the loans.

Latham later said of the non-recourse agreements: "It was -- it was just a way of protecting Seth's interest."[905] Similarly, Don Denton later said of the June 1986 releases, Ward now had the "same kind of obligation that he had on the original $1.15 million, where he was not personally liable to repay it. In the event he elected to do so, he could simply give the land back and all would be forgiven."[906] The releases, Denton also said, were tied to the presence of the federal examiners.[907]

In a July 22, 1986 memorandum to his attorney Latham wrote:

> Because it was not the intent of Seth or Jim for Seth to be at risk for the $300,000 and his property I later executed a non-recourse agreement in June [1986] to

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[905] Latham 8/20/96 GJ at 47; see also id. at 48 ("This was just a means of protecting Seth should the Service Corporation not be able to pay its liabilities to Seth"). In the 1988 trial, John Latham discussed the purpose of the June 1986 releases:

> Seth at this point in time was concerned because the service corporation at that time was not able to exercise that option and thereby buy the property from them and pay them the $300,000 in cash. Yet he had a loan to the savings and loan in which he owed money to the savings and loan, secured by that property. He did not want to be in a position where the service corporation could not buy the property and thereby pay him the $300,000 and yet he would have to pay the savings and loan back the $300,000 that was owed on its note.
>
> For that reason we released him from liability, not liability, but we released him from personal liability and set up the savings and loan's only recourse as going against the land itself so that if that case happened, if the service corporation could not pay Seth the $300,000, then he would -- the savings and loan could take the property, and Seth would not have to pay the $300,000 back to the savings and loan.

Tr. at 225, Ward v. Madison Guaranty, No. 87-7580 (E.D. Ark.) (testimony of Latham) (Doc. No. 341-00004136).

[906] Denton 8/20/96 GJ at 71.

[907] Id. at 71-72.

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protect Seth. The non-recourse agreement was not placed in the file until mid-July with the intent that it not be seen by the examiners immediately.[908]

This was done at the direction of John Latham or Don Denton.[909] Latham was unsure if the non-recourse agreements would have any binding effect on Madison Guaranty, but he executed them to appease Ward.[910] Ward also received $10,000 from Madison Financial by check, dated June 6, 1986, as partial payment of "commissions" owed him.[911]

On June 10, 1986, Mrs. Clinton billed the Madison Guaranty "general" matters file for a telephone conference with Rick Massey and an in-person conference with Ward.[912] This was Mrs. Clinton's only billing to Madison Guaranty that month.[913] In 1996, Mrs. Clinton was asked

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[908] Memo from John Latham, Madison Guaranty Executive Vice President, to Don Jack, attorney for John Latham at 3 (July 22, 1986).

[909] Latham 8/20/96 GJ at 48. "It was something that I didn't want -- and I don't remember why, but I didn't want the examiners asking questions about it at that point in time," John Latham later said. "And I can't remember if it was because -- well, I don't remember. I mean, it was -- I don't know. I think by that point I was just -- I didn't want to answer any more questions, but, yeah." Id. at 49.

[910] Id. at 49-50.

[911] Check No. 5364 from the account of Madison Financial Corporation payable to Seth Ward for $10,000 (June 6, 1986) (Doc. No. SEN33172). Ward testified at his 1988 trial that the $10,000 payment was to pay interest on the unfunded $300,000 April 7, 1986 cross loan from Madison Financial to Seth Ward. Tr. at 186-87, Ward v. Madison Guaranty, No. 87-7580 (E.D. Ark.) (testimony of Ward) (Doc. Nos. NE-00000198 through 199). The April 7 note was unfunded. Additionally, a document entitled "Commission Account - due Seth Ward, July 1, 1986" and dated July 10, 1986 shows Ward's commissions as $349,920 "[l] ess payments" of $300,000 and $10,000 for a total "[d]ue" of $39,920 (Doc. No. SEN33166). The written version of this document is in Ward's handwriting, as Ward acknowledged at his 1988 trial (Doc. No. 341-00004351) (handwritten version); Tr. at 194-96, Ward v. Madison Guaranty, No. 87-7580, (E.D. Ark.) (Doc. Nos. NE-00000206 through 208) (testimony of Ward).

[912] Rose Billing Records (June 1986) (Doc. No. DEK015038).

[913] Rose Billing Records (June 1986) (Doc. No. DEK015037).

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about this conference, shown some of the Ward loan documents dated in June, and asked if these were discussed when Ward saw her on June 10, 1986. Mrs. Clinton said she did not remember ever seeing the documents before or discussing them with Ward.[914]

By a document dated June 11, 1986, Ward returned the unfunded April 7, 1986 $70,943.47 note with the explanation that "By reason of Madison Guaranty's modification, dated June 6, 1986, subject note [#3359-76] is, in effect, paid in full. Therefore Seth Ward is returning Madison Financial Corporation's note . . . in the amount of $70,943.47 . . . by reason of being offset by subject listed note."[915] Although Ward returned the unfunded April 7, 1986 $70,943.47 note, he kept the unfunded April 7, 1986 note for $300,000. John Latham later stated that the unfunded $300,000 note "should have been demanded."[916] As explained in Chapter 2 of this Part, Ward filed a lawsuit in which he asserted the unfunded April 7, 1986 $300,000 note evidenced a debt owed to him by Madison Financial.

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[914] H. Clinton 2/14/96 FDIC Int. at 90-91.

[915] Document from Seth Ward (June 11, 1986) (Doc. No. 341-00004372); see also Tr. at 237, Ward v. Madison Guaranty, No. 87-7580 (E.D. Ark.) (Doc. No. 341-00004148) ("Q. Was the note for $70,943.47 given back when Mr. Ward was released from his personal liability on a $70,000 note? A. I believe it was") (testimony of Latham).

[916] Tr. at 235, Ward v. Madison Guaranty, No. 87-7580 (E.D. Ark.) (Doc. No. 341-00004146) (testimony of Latham); see also id. at 237-38 (Doc. Nos. 341-00004148 through 4149) ("Q. But, when they claimed they released him from the $300,000 note, they didn't make any effort so far as you know to get back or get a release on any $300,000 note they had given him? A. Not that I know of. It could have been asked for and never returned") (testimony of Latham).

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c. Parties Executed a June 24, 1986 Addendum to the September Agreement, which Materially Changed Ward's Compensation.

An addendum to Ward and McDougal's earlier compensation agreement was drafted and executed in June 1986.[917] Madison Guaranty employee Patricia Heritage's notes reflected that John Latham asked her to acquire a copy of the agreement between Ward and McDougal about commissions on Castle Grande (the original September 24, 1985 agreement).[918] She was told to look for the agreement in a desk drawer, but neither Heritage nor anyone else in the office could find it.[919] As discussed above, the examiners had already found the letter.[920] Heritage then obtained from Ward a copy of the original September 24, 1985 agreement to use as a basis for the addendum.[921] Heritage drafted the addendum, which Ward signed, and Sue Strayhorn notarized on June 24, 1986.[922]

The addendum said Ward was to receive ten percent sales commission on all the IDC property he sold. In addition, he was to receive a ten percent commission on all IDC property sold for commercial development regardless of whether he made the sale or not and he was to

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[917] Letter from Seth Ward to Jim McDougal (June 24, 1986) (Doc. No. 396-00000700).

[918] Pat Heritage Daily Notes (June 1986) (Doc. No. AAP-0002505).

[919] Id.

[920] Clark 7/13/96 Int. at 3.

[921] Letter from Seth Ward to Jim McDougal containing handwritten note to Pat Heritage, assistant to John Latham, Madison Guaranty, from Seth Ward (Sept. 25, 1985) (Doc. Nos. 042154 through 42155).

[922] Addendum from Seth Ward to James B. McDougal, President, Madison Guaranty (June 24, 1986) (Doc. No. 027112).

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receive a four percent commission on any sales of residential property.[923] When later asked about the June 24, 1986 addendum, McDougal said he did not remember it, but said he never would have agreed to a ten percent commission on sales not made personally by Ward.[924] McDougal said the other sales people would have been extremely upset at such an arrangement. Moreover, McDougal never would have agreed to pay ten percent commission to Ward for sales because McDougal himself -- and not Ward -- had arranged these sales.[925]

By the end of June 1986, Seth Ward had been paid a total of $380,000 for his role as straw man in the IDC/Castle Grande matter.[926] That was not enough for Ward, though, because by a document dated July 1, 1986, he tried to obtain additional payments; according to Ward's summary, the $300,000 and $10,000 payments were simply to be subtracted from the amount of "commissions" still owed him.[927]

3. The FHLLB Examination Culminated with a July 11, 1986 Meeting where Federal Regulators Demanded That the McDougals and Others Be Removed from Control of Madison Guaranty.

By the end of June 1986, the examiners remained convinced that there were serious problems with both Madison Guaranty in general and the Castle Grande development in particular. The examiners assigned to the case wrote several memoranda outlining why Madison

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[923] Id.

[924] J. McDougal 8/96-6/97 Int. at 23.

[925] Id.

[926] $300,000 of the $400,000 March 31, 1986 loan; $70,000 from the June 1986 loan; and another $10,000 from the June 1986 payment.

[927] Commission Account Due Seth Ward (July 1, 1986) (Doc. No. 56-00126495).

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Guaranty's real estate appraisals did not conform to the FHLBB rules.[928]

a. Madison Guaranty Was Notified of the July Meeting with FHLBB.

The FHLBB notified the Madison Guaranty board of directors by letter, dated June 19, 1986, that it had scheduled a meeting with them for July 24, 1986, in Dallas, Texas.[929] The letter reported that the examination of Madison Guaranty had found "matters of serious supervisory concern including unsafe and unsound practices." The letter criticized Madison Guaranty's failure to meet its net worth requirements in violation of the July 19, 1984 Supervisory Agreement, and transactions with affiliates and insiders. The letter required Madison Guaranty to immediately take six "corrective actions" before the scheduled meeting, the most relevant of which were that:

> 5) Madison Guaranty, or any of its subsidiaries, shall not finance any additional sales of real estate owned by the association or any of its subsidiaries, save for sales closed pursuant to legally binding commitments to provide such financing in existence at the date of this letter; [and]
>
> 6) [Madison Guaranty] shall not, and shall not allow any of its subsidiaries to transact business with any of the following named companies . . . and this office must be notified in writing prior to any payment of $1,000 or more by [Madison Guaranty] to any of the following companies . . .
>
> 1. Castle Sewer and Water Company
> 2. Castle Industries, Inc.
> 3. The Wilson Co., Inc
> 4. Hot Stuff, Inc.

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[928] Memo from Jim Clark to the file (June 25, 1986) (Doc. No. 99-00037728); Memo from Jim Clark to the file at 2-3 (June 26, 1986) (Doc. Nos. 99-00037711 through 37712).

[929] Letter from Walter H. Faulk, FHLBB, to Board of Directors, Madison Guaranty Savings & Loan (June 19, 1986) (Doc. Nos. DEK218778 through 218780). The meeting was later moved up to July 11, 1986.

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5. Abernathy Development
6. Sorenson Enterprise
7. Madison Marketing
8. Madison Real Estate
9. Designer Construction
10. Industrial Development Company of Little Rock (IDC)
11. Industrial Services Co. (ISC)
12. Madison Properties, Inc.
13. Dixie Continental Leasing, Inc.
14. Aunspaugh Designs
15. Master Developers, Inc.
16. Island Construction[930]

b. Bassett Gave the Governor's Office a "Heads Up" about Madison Guaranty's Problems and the July 11 Meeting with the FHLBB.

Beverly Bassett, who served as the Arkansas Securities Commissioner and Arkansas Savings and Loan Supervisor,[931] was notified about the FHLBB's upcoming meeting with Madison Guaranty's board of directors. And after receiving a copy of the June 19, 1986 letter from the FHLBB to Madison, Bassett sent a handwritten memorandum to Sam Bratton on July 2, 1986.[932] Bratton was a lawyer and a member of Governor Clinton's staff who acted as the liaison between the Governor's office and the Securities Department.[933] Bassett's memorandum, attaching a copy of the FHLBB's June 19, 1986 letter to Madison Guaranty's board of directors, said in full:

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[930] Letter from Walter H. Faulk, FHLBB, to Board of Directors, Madison Guaranty Savings & Loan at 2-3 (June 19, 1986) (Doc. Nos. DEK218779 through 218780).

[931] Bassett 11/8/95 GJ at 51-52.

[932] Memo from Beverly Bassett, Arkansas Securities Department Commissioner, to Sam Bratton, Liaison of the Education Department, Arkansas Governor's Office (July 2, 1986) (Doc. No. DEK218777).

[933] Senate Whitewater Comm. Hearing, supra note 147, at 14 (Jan. 25, 1996) (testimony

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> Madison Guaranty is in pretty serious trouble. Because of Bill's relationship w/ McDougal, we probably ought to talk about it. The meeting referred to in the attached letter has been moved up to July 11, 1986 and the FHLBB has asked me to be at the meeting.
>
> Please note that while all of the FHLBB restrictions in the letter are serious, #5 & 6 effectively put Madison out of business.
>
> "Thank you for your support."
>
> BB[934]

Bassett said she notified Bratton because she wanted to keep the Governor's office informed so that it would be prepared for press inquiries in the event the institution was to be shut down.[935] Bassett said from her experience with Guaranty Savings & Loan Association of Harrison, Arkansas, a financial institution closed in December 1985 by the FHLBB, the closing of Madison Guaranty could create problems for the Governor.[936]

Asked to elaborate on one line from her memorandum -- "Because of Bill's relationship w[ith] McDougal, we probably ought to talk about it" -- Bassett said:

> Well, it was my impression that Jim McDougal -- well, repeatedly told people, people in our office, people whoever, anywhere he went, that he was Bill Clinton's friend and no one -- I never heard that from Bill Clinton, but I had the distinct impression that Jim McDougal would make some effort -- might make some effort, if he found out, you know, or if he was concerned that something was fixing to happen, that he would try to intervene and that he would call the

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of B. Schaffer).

[934] Memo from Beverly Bassett, Arkansas Securities Department Commissioner, to Sam Bratton, Liaison of the Education Department, Arkansas Governor's Office (July 2, 1986) (Doc. No. DEK218777).

[935] Bassett 11/8/95 GJ at 99-100.

[936] Id. Vince Foster and Rose acted as counsel for the FHLBB and the FSLIC on the Guaranty matter.

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governor's office, that he would make some effort to interfere. And we had had that same experience the year before with Guaranty Savings & Loan in Harrison, and I didn't want that to occur. My suggestion was that they shouldn't have anything to do with him at all.[937]

Bratton and Bassett discussed the memo and Madison Guaranty's situation.[938] Although Bassett was sure she sent the July 2 memorandum to Bratton,[939] she did not think she called Bratton immediately after the July 11 meeting.[940] Bassett said she did not discuss Madison Guaranty's situation with Governor or Mrs. Clinton.[941]

Bratton later testified that the July 2, 1986 memorandum was not the first time Bassett had told him that Madison Guaranty was in trouble.[942] Bratton also said he definitely remembered having spoken with Bassett about Madison Guaranty's situation both before and after the July 11 FHLBB meeting.[943] Bratton testified that he would have told Governor Clinton (or someone on his staff) about the information from Bassett, and these discussions with the Governor began some six to twelve months before the FHLBB meeting in Dallas.[944] Bratton said

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[937] Id. at 102. Bassett said she did not know in 1986 that McDougal had formerly served on Governor Clinton's staff and that McDougal was a business partner with the Clintons. Id. at 102-03.

[938] Id. at 99-100; Bratton 12/5/95 GJ at 11-12.

[939] Bassett 11/8/95 GJ at 107.

[940] Id. at 111-12.

[941] Id. at 107-08; 116-18.

[942] Bratton 12/5/95 GJ at 13.

[943] Id. at 10-12, 17-18.

[944] Bratton 1/5/96 Senate Whitewater Comm. Depo. at 178.

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that the Governor asked Bratton to keep him advised on the matter, which he did.[945]

President Clinton testified that he did not ask to be kept apprised of Madison Guaranty's situation.[946] President Clinton later remembered that at some point he learned that Madison Guaranty was in dire straits, but he did not specifically remember a conversation with Bratton or Bassett on the subject, though he said that the conversation was possible.[947]

Bratton and Wright testified that they did not think they had any conversation with Mrs. Clinton about Madison Guaranty's situation.[948] President Clinton likewise did not remember any such discussions with Mrs. Clinton.[949]

c. On July 10, a Memorandum Was Circulated at Rose Discouraging New or Expanded Representation of Thrifts.

On Thursday July 10, 1986, Rose attorney Herb Rule circulated a memorandum to all attorneys at Rose about the firm's representation of thrifts and the FSLIC:

> When we began our representation of FSLIC in the Guaranty Savings and Loan Receivership, one of our primary qualifications was that we did not represent any savings and loan associations generally or in regulatory matters.
>
> We expect the Firm's fees from FSLIC this year on the Guaranty Receivership alone will exceed $600,000. The Office of General Counsel has requested the Firm not take on any savings and loan representation, particularly with respect to associations in financial difficulty.

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[945] Id. at 176-77; see also Bratton 12/5/95 GJ at 15-16.

[946] W. Clinton 7/22/95 Depo. at 52.

[947] Id. at 57-58. President Clinton also testified he did not remember conversations with Hale about Madison Guaranty's troubles. Id. at 80-82.

[948] Bratton 12/5/95 GJ at 19; Wright 2/29/96 GJ at 44.

[949] W. Clinton 4/22/95 Depo. at 82.

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> Since it is likely that we may be called on to represent FSLIC in connection with other receiverships, both in and out of Arkansas, we want to avoid taking on any new or expanded representation of savings and loan associations or their affiliates without prior notice to and approval by the Executive Committee.
> If you now represent any savings and loan associations or affiliates, please note the clients' names at the bottom of this sheet and return it to me. If you have any other questions, give me or Vince Foster a call.[950]

Rick Massey responded to Rule by sending him a handwritten note at the bottom of the memorandum:

> For about the past year, Hillary and I have represented Madison Guaranty S&L. ~~in connection with~~ Madison has continually had regulatory net worth problems.
>
> Massey[951]

In 1995, Mrs. Clinton said:

> I believe that around that time the commercial section of our firm was doing work or about to do work that was for FSLIC maybe, if FSLIC was still in existence then. I don't remember.
>
> But, in any event, there was an inquiry about doing work and the inquiry was circulated to the members of the firm about whether we did any work for savings and loans at that time, or were on retainer. And I believe at that point a decision was made that we weren't doing very much work for Madison and there was no point to continue the retainer, and to terminate that kind of relationship.[952]

In 1995, Mrs. Clinton could not remember receiving the July 10, 1986 memorandum from Herb Rule.[953] In 1998, Mrs. Clinton said the Rule memorandum was the impetus for her

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[950] Memo from Herb Rule, Rose attorney, to All [Rose] Attorneys, (July 10, 1986) (Doc. No. RIC120859).

[951] Id. (strikeout in original).

[952] H. Clinton 4/22/95 Depo. at 31.

[953] Id. at 32-33.

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return of the Madison Guaranty retainer.[954]

d. Madison Guaranty's July 11, 1986 Meeting with the FHLBB.

On Friday, July 11, 1986, John Selig and Breck Speed, attorneys from Mitchell Williams, accompanied the Madison Guaranty board to Dallas.[955] The FHLBB regulators gave the Madison Guaranty board a cease and desist order requiring Madison Guaranty to agree to remove the McDougals (who did not attend), Latham, and the Henleys (Susan McDougal's brothers) from all responsibilities connected with the institution.[956] Latham would be allowed to remain as a consultant for a short time to aid in the transition. The Castle Grande development was one of the projects discussed as being improper.[957] Also discussed at the meeting was the appointment of Madison Guaranty board member Stephen Cuffman as temporary CEO to run the institution on an interim basis until a replacement could be found.[958] Selig, for the Board, requested some time to review and consider the order.[959]

After the board returned to Arkansas, Latham attended several meetings in response to the

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[954] Id. at 130-35.

[955] FHLBB Dawn Pulcer's handwritten notes at 1 (July 11, 1986) (Doc. No. 99-00022968). The board members were John Latham (Chairman), Steve Cuffman, C. Dennis Edwards, Jack Owen, Sarah Hawkins, and Charles Peacock.

[956] FHLBB Dawn Pulcer's handwritten notes at 8-12 (July 11, 1986) (Doc. Nos. 99-00022975 through 22979); Latham 3/28/95 GJ at 48-49.

[957] FHLBB Dawn Pulcer's handwritten notes at 12-13 (July 11, 1986) (Doc. Nos. 99-00022979 through 22980).

[958] Id. at 11 (Doc. No. 99-00022978).

[959] Id. at 12 (Doc. No. 99-00022979).

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impending order.[960] McDougal resigned immediately,[961] and Latham resigned the next Thursday, July 17, 1986.[962]

4. The Events of Monday, July 14, 1986.

On Monday, July 14, 1986 the next business day after the FHLBB's actions, four significant events happened: 1) Betsey Wright, Governor Clinton's chief of staff, sent the Governor a memorandum discussing the McDougals' problems and asking whether Governor Clinton still had the Whitewater stock; 2) Seth Ward went to Madison Guaranty and presented a backdated, changed version of the September 24, 1985 compensation agreement; 3) Don Denton drafted a memo for John Latham describing Seth Ward's relationship with Madison Guaranty; and 4) Mrs. Clinton returned the Rose retainer to Madison Guaranty with a letter that minimized Rose's prior representation.

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[960] Latham's calendar for Saturday, July 12, 1986, reads:

> John Selig - [illegible] pick up notes / S&L review C&D / Jim [illegible] discuss [illegible]/ Bob Wilson's home - discuss him as CEO

His calendar for Sunday, July 13, reads:

> S&L for review of C&D / Don [illegible] office / Jim Guy Tucker's office / Jim McDougal - [illegible] discuss options

Latham's calendar (July 12, 1986) (Doc. No. 038526). Latham was questioned about a number of his calendar entries by both the Independent Counsel and the FDIC, but not the specific entries for July 12 and 13, 1986. Latham remembered little, if anything, about his calendar entries and was of little help in deciphering his handwriting. Latham 8/20/96 GJ at 54-70; Latham 7/15/96 Int. at 3.

[961] Latham 3/28/95 GJ at 49.

[962] Handwritten letter from John Latham to the Madison Guaranty Board of Directors (July 17, 1986) (Doc. No. 212-00002944).

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a. Betsey Wright Sent Governor Clinton a Memo about the McDougals' Troubles.

Betsey Wright sent a memorandum to Governor Clinton about McDougal and Whitewater stock indicating that she knew about Madison Guaranty's problems with the FHLBB. The memorandum said:

> White Water stock
> (McDougal's Company)
> _____
>
> Do you still have? (pursuant
> to Jim's current problems
>
> If so, I'm worried about it.[963]

Governor Clinton sent Wright a handwritten reply at the bottom of the memorandum:

> No -- Don't have <u>any</u> more
> B[964]

Wright said she had sent the memorandum because, although not publicly announced, "it was all over the streets" that McDougal was being ousted from Madison Guaranty.[965] Wright was worried that if the Clintons were still business partners with the McDougals, McDougal's removal, by association, could create a negative public perception of the Governor, who was running for reelection.[966]

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[963] Memo from Betsey Wright, Clinton campaign manager, to Governor Clinton (July 14, 1986) (Doc. No. 1221-00000901).

[964] <u>Id.</u>

[965] Wright 2/29/96 GJ at 33-34.

[966] <u>Id.</u> at 41-42.

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b. The Backdated September 24, 1985 Agreement.

Seth Ward and Jim McDougal signed a second agreement, backdated to September 24, 1985, sometime after signing the original September 24, 1985.[967] The backdated agreement appeared to have been signed on or near July 14, 1986, when Ward went to Madison Guaranty and presented the agreement. "Backdating" is a crucial issue, because the cease and desist order presented by the FHLBB on July 11, 1986 would have prohibited Ward and McDougal from doing what they did using a current date.

The terms of the agreement represented a substantial improvement in Ward's position over the original agreement: Ward was to receive a ten percent commission on commercial property regardless of who sold the property, and a $35,000 fee in return for the 270 day option. In addition, the backdated September 24, 1985 agreement: 1) increased the commissions owed to Seth Ward; and 2) excluded Holman Acres from Madison Guaranty's 270-day option to repurchase the IDC property held by Seth Ward.[968] The backdated September 24, 1985 agreement in the form of a letter from Seth Ward to Jim McDougal, stated:

> Dear Mr. McDougal:
>
> This is to set forth our agreement concerning the property commonly referred to as all the land owned by the Industrial Development Company of Little Rock and certain improvements thereon.
>
> On or about the 13th day of September, 1985, Madison Guaranty Savings & Loan Association agreed to acquire all of the Industrial Development Company of Little

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[967] Letter from Seth Ward to Jim McDougal, with addendum (Sept. 24, 1985) (Doc. Nos. NE-00000017 through 19).

[968] Id.

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Rock's property except the grounds and building commonly referred to as the Timex Building. In this agreement Madison has the right to assign its rights to any entity or individual. As part of our agreement, I have agreed to take title to all of the assets of the aforementioned property that is located immediately north of 145th Street, the water and sewer improvements, and the sewer treatment ponds, including the one located south of 145th Street. Madison Guaranty Savings & Loan Association will agree to lend me the purchase price for this property secured by a mortgage of those parcels and the sewer and water works. Madison Guaranty will pay $35,000.00 to me to have an option for at least 270 days from the date of acquisition to purchase the property from me at any time, in whole or in part, for at least the pro rata amount of the note plus all accrued interest; except one parcel described:

> Approximately 22-acres located and referred to as the Northeast Quadrant of the Interchange of Highway 65 and 145th Street. More specifically described in the attached legal description which is a part of this agreement.

It is the intention of both Madison and myself to attempt to develop all the property acquired from I.D.C. and sell it as quickly as possible. If the property or any portion thereof is sold during the 270-day period, the sale price will be mutually approved by me and Madison Financial Corporation. The proceeds of the sale will be applied toward the promissory note, less a 10% sales commission to be paid to me. At Madison's discretion, any particular piece of property may be deeded back to Madison prior to the execution of a sales transaction.

It is also agreed, in addition to the salary I am receiving from Madison Financial Corporation, I will receive 10% sales commission on all property sold, regardless who sells it, except residential property that will be located south of 145th Street, in which case I will receive 4% commission if sold by any other person. During the term of the option period, all of the net revenues of the water works and sewer department shall be forwarded directly to Madison Guaranty for application toward the note, unless such facilities are sold sooner. Madison Financial Corporation will also be responsible for all taxes, special assessments, dues, insurance premiums, etc. during the period of this option.

I would appreciate your acknowledging and agreeing to the terms of the letter of agreement.

Sincerely,

/s/ Seth Ward

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Seth Ward

Acknowledged and accepted:

/s/ James B. McDougal
James B. McDougal, President
Madison Financial Corporation[969]

The property description of Holman Acres was attached as an "addendum" to the backdated September 24, 1985 agreement.[970]

When he was later asked about the backdated agreement, Jim McDougal acknowledged his signature on the document, but said that he did not remember when he signed it.[971] McDougal thought that if Ward had given him a backdated document he would have signed it, though if he had read the document carefully he would not have signed it.[972] McDougal said he had only agreed to give Ward a ten percent commission on the sales that he made and a four percent commission on sales by others. McDougal said had he agreed to a ten percent commission on all sales, it would have caused tremendous problems with the other employees.[973]

Ward later conceded that the document had been backdated, but he testified the letter was backdated by a matter of weeks though he could not remember precisely how many weeks.[974]

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[969] Id. (Doc. Nos. NE-00000017 through 18).

[970] Addendum to the property description of Holman Acres (Sept. 24, 1985) (Doc. No. NE-00000019).

[971] J. McDougal 8/96-6/97 Int. at 20.

[972] Id.

[973] Id.

[974] Ward 2/12/96 Senate Whitewater Comm. Depo at 20-22.

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Ward said he realized shortly after executing the first letter that it did not accurately describe the terms of his deal with McDougal. Ward said that he asked Hubbell if it was legal to execute a corrected version of a contract to reflect the actual terms of an agreement while keeping the original date of the previously executed contract.[975] Ward said Hubbell answered that if the backdated agreement accurately reflected the terms of the agreement at that date, then it would be legally acceptable.[976]

The information in the letter and testimony of other witnesses established that the letter was backdated by substantially more than a matter of weeks:

(1) The letter contained a legal description for the Holman Acres property that could not have been prepared until sometime after the middle of November 1985, when the property was surveyed.[977]

(2) The Holman Acres property description that accompanied the backdated September 24, 1985 agreement was not prepared until March 31, 1986.[978]

(3) John Latham testified that he remembered first seeing the document "around May or June of '86."[979]

(4) As discussed above, McDougal and Ward executed an addendum to their compensation agreement dated June 24, 1986, drawn from the original September 24, 1985 agreement.[980] Thus, as Latham later testified, the June

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[975] Id. at 23.

[976] Id. Hubbell said that he might have told Ward that two parties could consent to modify their agreement. Hubbell 8/22/96 GJ at 105-06, 163.

[977] White 10/15/96 Int. at 5-6.

[978] See Little Rock South Industrial Park NE Corner Legal Description (Mar. 31, 1986) (Doc. No. MGSL-FR-00000028).

[979] Tr. at 227, Ward v. Madison Guaranty, No. 87-7580 (E.D. Ark.) (testimony of Latham) (Doc. No. 341-00004138).

[980] Addendum agreement (June 24, 1986) (Doc. No. 396-00000700). One copy of the

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24, 1986 addendum "would almost go with -- with the one that doesn't speak about Holman Acres" -- the original September 24, 1985 agreement.[981] In other words, the backdated agreement was created after the June 24 addendum.

(5) Don Denton testified that Ward presented him an unsigned copy of the backdated September 24, 1985 agreement on July 14, 1986. Denton said Ward returned later that day with an executed copy of the letter.[982]

This evidence was consistent with the sequence of events about the regulators' actions and with the changes made to the agreements. The compensation that Ward received from the June 24 addendum was close to that which he had obtained under the backdated September 24 agreement. The most important change between the two was the treatment of Holman Acres. The backdated September 24 agreement exempted Holman Acres from the original option that Madison Financial had for all property. If the agreement was accepted as genuine, it would have concealed the fraud Ward and the Madison Guaranty insiders had perpetrated when they used Holman Acres as a device to funnel more than $300,000 in payments to Ward at a time when the examiners were keenly interested in Ward's compensation. The May 1 option agreement is the clearest example of this fraud: Madison Financial agreed to purchase for $400,000 from Ward a piece of property that it already had an option to purchase for $70,000. Madison Financial entering into such an option served no legitimate purpose.

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original September 24, 1985 agreement that was produced to the Independent Counsel had a handwritten note to Pat Heritage from Seth Ward that said this was the agreement used to draft the June 24, 1986 addendum. Agreement letter from Seth Ward to Jim McDougal (Sept. 24, 1985) (Doc. Nos. 042154 through 42155).

[981] Latham 8/20/96 GJ at 54.

[982] Denton 8/20/96 GJ at 75-76.

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By replacing the original agreement, as well as the subsequent June 24 addendum, the backdated agreement benefited Ward at Madison Guaranty's expense. It increased the "commissions" owed Ward and it purported to provide him with a payment for the option, which Ward later would claim had been paid.[983] It excluded Holman Acres from Madison's option to repurchase from Ward the property he held for Madison Financial, paying Ward an additional amount ($35,000) for a less extensive option.

The exclusion of Holman Acres was significant in determining Ward's motive in acquiring the agreement. After February 28, 1986, the terms of the original September 24, 1985 agreement provided Madison Guaranty with an option to repurchase Seth Ward's remaining IDC property (Holman Acres) for the unpaid balance ($70,000) of his $1.15 million loan. From February 28, 1986 to July 14, 1986, Ward and Madison used Holman Acres as:

(1) collateral for the $400,000 March 31, 1986 loan from Madison Guaranty to Ward ($300,000 of which Ward never repaid);

(2) the property supposedly sought by Madison Financial as represented by the $400,000 March 31, 1986 and the $300,000 and $70,943.47 April 7, 1986 unfunded cross notes from Seth Ward (as "lender") to Madison Financial (as "borrower");

(3) the property Madison sought an "option" to buy from Ward for $400,000 in the form of the May 1, 1986 option; and

(4) collateral for the $70,000 June 1986 loan from Madison Guaranty to Seth Ward (that Ward did not repay).[984]

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[983] Ward 2/12/96 Senate Whitewater Comm. Depo at 112-13.

[984] In 1988, at the trial of Ward v. Madison Guaranty, an appraiser testified that Lots 27 and 28 of Holman Acres were worth $170,000. Tr. at 177, Ward v. Madison Guaranty, No. 87-7580 (E.D. Ark.) (Doc. Nos. NE-00000308 through 311) (testimony of Pyron).

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c. Don Denton's July 14, 1986 Memorandum "RE: Ward, Seth."

Don Denton wrote a memorandum dated July 14, 1986 to John Latham "RE: Ward, Seth."[985] Denton's memorandum expressed Denton's understanding of Ward's Castle Grande dealings:

> It is my understanding that Seth had an arrangement with Madison Financial Corporation that he would receive a $300,000 commission for his participation in the acquisition of part of the real estate acquired in September of 1985 from Industrial Development Corporation. It is also my understanding that Madison Financial Corporation was not in a position, from a liquidity standpoint, to make payment to Seth in early April 1986.
>
> Seth had originally borrowed $1,150,000 from Madison Guaranty for his part of the purchase. Subsequent sales reduced the balance of his loan to $70,000 by early April of 1986. A new note was drawn in the amount of $70,000, payable to Madison, which now matures November 30, 1986.
>
> On March 31, 1986, Seth executed a note in the amount of $400,000 secured by the northeast intersection of the Pine Bluff Freeway and 145th Street [Holman Acres]. We originally advanced the full $400,000 with Seth subsequently repaying on April 23 $100,000 of this loan. The current balance is $300,600 which has been extended to November 30, 1986. In the interim, pending preparation of an option agreement whereby Madison Financial would purchase the northeast corner from Seth, a note was drawn in the amount of $300,000 dated April 7, 1986, payable to Seth Ward, executed by Madison Financial Corporation. This note was later destroyed and replaced by a similar note. An option agreement was drawn, dated May 1, 1986, obligating Seth to sell the property to Madison if it so opted. This option was in the amount of $400,000 and I am assuming this would cover the $300,000 note, the $70,000 note, and interest on those two obligations.
>
> It is my understanding that title to some 50 acres on the northeast boundary of 145th Street remains in Seth's name and is not included in this option arrangement. This is the property that Peacock is currently developing for an

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[985] Memo from Don Denton, Senior Vice-President, Madison Guaranty, to John Latham (July 14, 1986) (Doc. No. DD000000052).

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FHA project.

Seth has a third note with Madison Guaranty S&L which to my knowledge has no connection with the 145th Street project. This note is #4215 in the amount of $93,000, dated June 10, 1986. This loan matures January 30, 1987 and is unsecured.

HDD/ly[986]

d. Mrs. Clinton Returned the Madison Guaranty Retainer.

On July 14, 1986, the first business day following the July 11, 1986 meeting between Madison Guaranty's board and the FHLBB, Mrs. Clinton had a letter delivered to Jim McDougal and John Latham, terminating Madison Guaranty's retainer relationship with Rose. The letter stated:

Dear Jim and John:

When you requested the Rose Law Firm represent Madison on a specific matter in April, 1985, I advised you that the firm would credit fees against a monthly retainer and then bill for whatever fees might be in excess of the retainer at the end of each month. Since that time, Madison has run a credit in its account at the end of every month.

We are also aware that since that time Madison has been relying and continues to rely on a number of other law firms to provide ongoing representation, and that our representation has been for isolated matters and has not been continuous or significant.

You currently have a credit with the Rose Law Firm of $4,622.53. I am, therefore, returning the enclosed check our firm received for $2,000 as an advance against legal fees for the month of July, 1986, and a check for the retainer credit in the amount of $4,622.53.

We do not believe it appropriate for us to take a pre-payment of legal fees when

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[986] Memo from Don Denton to John Latham, Madison Guaranty Executive Vice President (July 14, 1986) (Doc. No. DD000000052).

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there is only one matter we are representing Madison on, namely the negotiations with Savers over the Babcock and Econolodge loan participations. If you would like us to work on another specific matter, we would be glad to discuss it on a case-by-case basis.

Sincerely yours,

For the Rose Law Firm
HILLARY RODHAM CLINTON[987]

Mrs. Clinton sent blind copies of the letter to Vince Foster and Herb Rule.[988]

In 1995, Mrs. Clinton was asked about the return of the retainer. She did not remember any conversations about Madison Guaranty's condition:

Q. Are you familiar with this letter?

. . . .

A. Yes, I am.

Q. Can you tell us by this letter what you all were doing?

A. We were terminating the retainer relationship with Madison and returning the accrued retainers that had already been deposited.

Q. And according to this, how much did you send back to them in July of '86?

A. Well, we returned a check for $2000, and we sent a check for $4,622.53.

Q. Other than this memo coming out from Mr. Rule, which basically is saying we are not supposed to take on or expand any representation of institutions, especially any with financial difficulty, can you tell us who you would have discussed this with, this whole matter of terminating this and sending the money back?

---

[987] Letter from Hillary Rodham Clinton to Jim McDougal and John Latham (July 14, 1986) (Doc. Nos. RLF2 02989 through 2990).

[988] Id.

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A. Well, I don't know specifically, but I would assume that Mr. Rule would have inquired further in response to Rick Massey's note, and there would have been some discussion amongst people, and then I would have been asked to write this letter if I was the billing attorney, and return the money.

Q. Do you recall today any discussions about if Madison was in serious financial difficulties at this point?

A. I do not recall any.[989]

In her February 1996 FDIC interview, Mrs. Clinton was again asked about this:

Q. Let's turn to tab 37 for a moment. Would this be an unsigned copy of a letter you sent to Mr. McDougal and Mr. Latham on July 14, 1986?

A. It appears to be, yes.

Q. And you had hand-delivered?

A. That's what it says on the first page of the letter.

Q. Why did you send this letter?

A. I believe, based on the documents which I have reviewed that the letter was in response to a decision by the firm that at the request of FSLIC, the general counsel's office, that the firm not take on any savings and loan representation, particularly with respect to associations in financial difficulty, and I'm reading from the memorandum from Herb Rule to all attorneys dated July 10, 1986.

And again, I have no specific recollection, but I believe that in response to this memorandum, Mr. Massey advised Mr. Rule that we had done work for Madison and that work was considered by the firm to be such that, in response to the Office of General Counsel, we should no longer continue it.

And I don't recall this, but again, just putting together the pieces of the

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[989] H. Clinton 4/22/95 Depo. at 34-35; see also id. at 37 (Mrs. Clinton stated that she does not remember any discussions about Madison's problems before July 14, 1986, when she returned the retainer to Madison).

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documentation, I believe that I was asked to advise Mr. McDougal and Mr. Latham, which I did in this letter. We returned their accumulated retainer and on July 17, in a memo to Herb Rule, I advised him that we had sent the letter to Mr. McDougal and Mr. Latham.

Q. Now, the July 10 memo to which you made reference is the memo behind tab 36; is that right?

A. Yes, that's correct.

Q. And the July 17 memo is the memo behind tab 38?

A. That's right.

Q. Now, when you wrote your letter, the letter behind tab 37, it's correct, is it not, that you knew nothing about a meeting that had occurred a few days before between representatives of the Federal Home Loan Bank Board and the board of directors of Madison Guaranty?

A. That's correct.

Q. And when you wrote your letter, had you seen or heard about the letter dated June 19, 1986 that's behind tab 35?

A. I do not recall knowing about this letter, Mr. Ericson.

Q. Beverly Bassett Schaffer has testified recently that she told her liaison to the governor's office about the Federal Home Loan Bank Board meeting on July 11 a few days in advance of that meeting. And I'm afraid this is not a book because I got the copy yesterday.

I have here and I'd like to show you some documents that have been marked CCBW 884 through 888, which I received yesterday from counsel for Betsey Wright. The first page I understand to be a handwritten memo from Beverly Bassett.

The second, third and fourth pages are the June 19 letter we just looked at, and then the last page is, what I understand to be from testimony, a note from Betsey Wright to your husband dated July 14.

My first question is whether you've ever seen any of this before?

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A. No, I do not recall seeing any of this before, unless I saw it from my lawyers during the last year or two.

Q. I meant at the time. As of July 14, 1986, had you learned from any source, including your husband, that the federal regulators were about to take action or contemplating action with respect to Madison Guaranty or McDougal?

A. I do not recall learning that from any source.

Q. Were you aware that an examination of Madison Financial was underway and had been underway for some months?

A. I do not recall knowing that.

Q. Going back to tab 36 for a moment, just a couple of questions -- just one really. At the bottom here, Rick Massey has written a note, the last part of which says "Madison has continually had regulatory net worth problems." Was that something you knew at this time?

A. Well, I knew the idea behind the preferred stock offering was to try to raise money for Madison to be able to meet its capital requirements. I knew that back when the representation was undertaken by Mr. Massey.

Q. And you knew also, didn't you, that unless and until Madison met its capital requirements, the securities department was not going to let Madison go ahead with the broker-dealer action?

A. That's right. The securities commissioner had conditioned Madison's being able to go forward on its meeting its regulatory requirements.

Q. Looking at tab 38 just for a second, is there any particular reason you would have cc'd Vince Foster on this July 17 memorandum?

A. I believe that Mr. Rule mentions Mr. Foster in his memorandum that we were just looking at in the last sentence. "If you have any other questions, give me or Vince Foster a call." Mr. Foster was the attorney I worked for on the FSLIC representation and I assume that because he was mentioned in Mr. Rule's memo, I cc'd him.[990]

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[990] H. Clinton 2/14/96 FDIC Int. at 91-96. The July 17 memorandum mentioned in this

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In her 1998 deposition, Mrs. Clinton testified:

Q. . . . . Let me ask you about the July '86 -- we have asked you before, Mrs. Clinton, about the circumstances surrounding the return of the retainer of advance against fees on July the 14th of '86.

A. Uh-huh.

Q. We have previously shown you the memo from Beverly Bassett to Sam Bratton. Do you recall that? This was prior to the Home Loan Bank Board meeting with the Madison board.

A. I, I recall your showing that to me, but I had never seen it before.

Q. Okay. But I'll just give you dates. That's July 2nd of '86, and attached was a letter from the Home Loan Bank Board saying they wanted to meet with the Madison board, as a result of the exam that's been going on in March, April, May, June of '86.

Now, on the Monday following the meeting in Dallas, and I think we probably told you this last time, McDougal and Latham basically are told, you're out. McDougal is not at the meeting, but they told the board that Mr. McDougal and Mr. Latham had to be out. The next working day, you return the retainer back to Madison Guaranty. Do you recall that?

A. Yes.

Q. Now, I want to show you what's been marked as Exhibit 91. This is a memo that was produced to us by Bets[e]y Wright. I don't know if you know her handwriting or not?

A. I recognize that.

---

testimony is discussed below. Although Mrs. Clinton did not remember any discussions about McDougal and Madison's problems before she returned the retainer, she has acknowledged that some discussions may have taken place. H. Clinton 4/22/95 Depo. at 37; see also H. Clinton 4/25/98 Depo. at 133 ("[T]he clear message was that if you weren't doing anything and there was, you know, no reason to continue the representation, then we should take another look at it. And in the case of Madison there hadn't been very much going on in that file").

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Q. And then it's to apparently, Gov, or Governor, and then there is -- I was reminded of this. That's really not a backwards check if you are left-handed. But do you recognize that as the way your husband checks things off?

A. I do, and I recognize his writing on the bottom of the page, too.

Q. Okay. Now, this memo is on the first working day after McDougal has been shown the door at Madison. And the way it looks like to me, it says, "Whitewater stock, McDougal's company, do you still have pursuant to Jim's current problems? If so, I'm worried about it." And then it appears your husband has written, "No. Don't have any more."

Now, Ms. Wright was the chief of staff, was she not?

A. Yes, she was.

Q. And she was also a pretty good political advisor, was she not?

A. She was, indeed.

Q. Kind of one of the main ones that advised with your husband. Now, when she says she is worried about the Governor and McDougals, do you think that's what she's worried about there? Did you talk to her about this?

A. I don't recall talking to Bets[e]y about this at all. Bets[e]y was always worried. And she worried, I think, appropriately about everything.

Q. Well, why would you worry about McDougal?

A. I don't know. I'm just not surprised to see in her handwriting, "I'm worried." That was usually something she did on a regular basis.

Q. In political races, did you try to avoid negative associations?

A. Certainly. But that's not what was happening here.

Q. What's happening here?

A. Well, there was no linkage between anything that was going on inside Madison with Mr. McDougal and our firm's decision not to represent Madison any longer. It just so happened that about the time these actions

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were occurring, Mr. Rule, who was one of our major commercial lawyers, sent around a memo asking that we no longer represent savings and loan associations.

Q. No, ma'am, it didn't say that. It says, the memo that Mr. Rule sent around, said you will not take on any new representations or expand any present representations without permission of the executive committee. It says nothing about stopping that. That's not so. Do you want to see a copy of that?

A. No, but the clear message was that if you weren't doing anything and there was, you know, no reason to continue the representation, then we should take another look at it. And in the case of Madison there hadn't been very much going on in that file.

Q. All right. On that same Monday that Ms. Wright wrote that memo, we also know that Mr. Ward walked into Madison that day and he had an unsigned backdated document basically saying, here was my arrangement with Madison for sales agreements. He comes back later again that day with a signed copy. All right.

Now, did you talk to Seth Ward on July the 14th, 1986?

A. I do not believe I talked to Seth Ward on July -- July, which, 14th? No.

Q. Yes, ma'am, that --

A. No.

Q. -- same day, that same Monday.

A. Not that I recall.

Q. All right. Let me hand you what we marked as Exhibit 92. The top document, I will represent to you, Mrs. Clinton, is some typewritten minutes of the Little Rock Airport Commission, which indicates it met on July the 14th, 1986 at 1:30. And present included Mr. Robert Wilson and Mr. Seth Ward. And also present was you. And then there is a Commission meeting.

Then I have actually attached there, we had gotten the minutes of the Airport Commission, and this is just -- somebody has compared the dates

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of certain meetings between '84 and '89, and then indicated the days the minutes reflect that both you -- your attendance and Mr. Ward's attendance.

But, according to the minutes, on the same day that you sent this back to Madison, and the same day that Mr. Ward went into Madison, you are in Airport Commission meetings with Mr. Ward. Does it appear that's what this reflect[s]?

A. Yes. It appears we were both at the Airport Commission meeting.

Q. All right. We also know that the next day Mr. Wilson, who was there at the Airport Commission meeting, is at the Rose Law Firm meeting with Mr. Hubbell and Mr. Latham, and they are talking to Mr. Wilson about him perhaps buying the stock of Madison and taking over the institution. Mr. Wilson is being considered for that at the Madison board meeting on July 15th.

Now, my question to you is, did you talk to Bob Wilson or Seth Ward about Madison and its troubles?

A. I don't believe I did so at all, Mr. Ewing. I have no memory of that.[991]

On Thursday July 17, 1986, three days after Mrs. Clinton returned the Madison Guaranty retainer, she sent a memorandum to Herb Rule explaining it:

> While you were on vacation, I sent the attached letter to Latham and McDougal concerning our representation of Madison. In the letter, I acknowledged that we were continuing to do work on only one matter, namely the Babcock and Econolodge loans. I received the other attachment from Savers to Denton concerning a request for the payment of expenses on the loans and drafted the attached response for Denton to send to Savers. Let's discuss this upon your return.[992]

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[991] H. Clinton 4/25/98 Depo. at 130-35 (emphasis supplied).

[992] Memo from Hillary Rodham Clinton to Herb Rule, Rose attorney (July 17, 1986) (Doc. No. 105-00003759). Mrs. Clinton also sent a copy of the memorandum to Vince Foster. Id.

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In November 1986, Rose associate David Williams was asked to summarize the current and prospective clients Rose had withdrawn from or declined due to its representation of FSLIC. On November 20, 1986, Williams wrote a memorandum summarizing the results of his survey:

> Based upon a quick, informal survey with selected members of the firm, we have had either to withdraw from representation of present clients or decline representation of the following prospective clients due to our representation of FSLIC:
>
> . . . .
>
> 9. Madison Guaranty Savings & Loan. Due to our representation of FSLIC, we have withdrawn from representation of Madison, which had been a previous client of ours generating estimated annual fees to the firm of approximately $40,000.[993]

The memorandum was marked with handwritten edits, possibly by Foster or Mrs. Clinton. The revised paragraph read:

> 9. Madison Guaranty Savings & Loan. Due to our representation of FSLIC, we have discontinued further representation of Madison. Hillary Clinton and others had represented [them?] from time to time on special assignments.[994]

IV. SUMMARY CONCLUSION

Mrs. Clinton began working for Madison Guaranty in April 1985. When later asked how it came to be that she represented Madison, Mrs. Clinton alluded to a long-unpaid bill for work done for McDougal's Madison Bank in Kingston and testified that her role was in securing payment of the bill before the Rose Firm began representation of McDougal's thrift, Madison Guaranty. Mrs. Clinton's testimony was factually inaccurate -- the "unpaid" bill had, in fact, been

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[993] Memo from David L. Williams, Rose Law Firm attorney to Vincent Foster Jr., Rose Law Firm attorney at 1, 3 (Nov. 20, 1986) (Doc. Nos. GS01967-69).

[994] Id. at 3.

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paid more than 6 months prior to McDougal's hiring of Rose and Mrs. Clinton to represent Madison Guaranty.

Once hired, Mrs. Clinton performed a wide variety of work on behalf of Madison Guaranty. She, and the Rose Firm, initially worked on matters relating to efforts to raise capital through the sale of preferred stock. Later, the firm did a substantial amount of work relating to the acquisition and development of property from the IDC, which became known as Castle Grande. Mrs. Clinton personally worked on two regulatory issues relating to that development -- the possible construction of a brewery and the possible sale of water by the on-site utility to a business outside Castle Grande and to Maple Creek Farms.

The evidence conclusively established that Jim McDougal, Susan McDougal, Jim Guy Tucker, and David Hale engaged in a pattern and practice of fraud involving real estate transactions and fraud against financial institutions, using Madison Guaranty, Madison Financial, and CMS as the means by which their frauds were perpetrated. These frauds included the straw purchase of property at Castle Grande by Seth Ward, and other fraudulent transactions. As detailed in Volume II, Part A and Volume I, Appendix 5, these frauds also included the $825,000 nominee loan to Dean Paul, the related CMS $300,000 Master Marketing loan to Susan McDougal, and the related CMS $150,000 loan to Jim Guy Tucker's corporation to buy the Castle Grande utility.

The Castle Grande transactions (and Ward's role in those transactions) were, ultimately, a focus of the federal bank examiners who suspected their fraudulent character. Initially, McDougal and Ward concealed Ward's role in the transaction through the creation of two "cross

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notes." When that concealment proved ineffective, they caused the creation of an "option agreement" that succeeded (albeit only for a few months) in concealing the fraud. Some of the legal services Mrs. Clinton performed for Madison Guaranty were used (and misused) by McDougal and Madison Guaranty in their efforts to fend off and deceive federal and state bank regulators.

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PART B

THE RELATIONSHIP OF MADISON GUARANTY, CMS, AND THE ROSE LAW FIRM

Chapter 2:

Aftermath of the McDougals' Involvement with Madison Guaranty -- Federal Investigations and Attempted Cover-Ups (1986 to 1999)

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I. INTRODUCTION

This Chapter summarizes the evidence relating to events occurring after July 1986, when the federal regulators removed the McDougals as directors of Madison Guaranty. Madison Guaranty subsequently failed, costing the American taxpayers in excess of $73 million. Various federal investigators examined the causes of and responsibility for that failure. In the main, this Chapter is the story of those investigations and the evidence relating to efforts to avoid and evade the investigators' scrutiny by those suspected of responsibility for the bank's failure. It is also the story of how some members of the Rose Law Firm, particularly Webster Hubbell, concealed the firm's prior representation of Madison Guaranty from the Resolution Trust Company ("RTC"), in an effort, at a minimum, to continue to generate revenue by representing the RTC.

As with all failures of financial institutions, the responsible federal agencies -- the Federal Home Loan Bank Board ("FHLBB"), Federal Deposit Insurance Corporation ("FDIC") and, later, the RTC -- examined the operations of Madison Guaranty to determine what went wrong and who was responsible. Typically, when an institution fails, the federal agencies look at the conduct of all of the professionals who had responsibility for the institution's conduct and whose action (or inaction) might have contributed to the institution's failure. For example, federal agencies typically examine the conduct of the directors and officers of the institution, to determine if the directors and officers exercised the appropriate duty of care in overseeing the institution; they examine the conduct of the institution's auditors to determine if the auditors were negligent in failing to account for the institution's books; and they examine the conduct of the attorneys who performed legal services for the institution to determine if their legal work

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contributed to the losses by and failure of the institution.

In this regard, Madison Guaranty was not appreciably different from any other savings and loan association. After the McDougals were dismissed, the board of directors hired the law firm of Borod & Huggins to conduct a thorough review of the thrift's practices. Because the review uncovered substantial evidence of criminal conduct, Madison Guaranty referred the matters to the FHLBB and the FBI, which then conducted a criminal investigation. Madison Guaranty also initiated a lawsuit against Frost & Company ("Frost"), its auditing firm, charging that Frost had been negligent in its failure to uncover Jim McDougal's frauds. Madison Guaranty was placed into a conservatorship by federal regulators in March 1989. Thereafter, managed by the FDIC and, later, the RTC, Madison Guaranty continued the lawsuit against Frost and began considering suits against other professionals -- for example, Madison Guaranty's principal outside counsel, Mitchell, Williams, Selig & Tucker. The FDIC replaced the original outside counsel with the Rose Law Firm, which handled the Frost lawsuit until its conclusion in 1991.

Conduct that negligently contributes to the failure of a institution can result in civil liability. The same conduct, if knowing and deliberate, generally constitutes a federal criminal offense. Accordingly, in early 1987 the FBI began investigating Madison Guaranty. In 1989 and 1990, that investigation resulted in the guilty plea of thrift president John Latham and the indictment (and acquittal) of Jim McDougal. Following additional investigation, in September 1992, the RTC sent a criminal referral related to Madison Guaranty to the U.S. Attorney for the Eastern District of Arkansas and the FBI Little Rock field office. The referral listed the McDougals as suspects and the Clintons as witnesses. In the fall of 1993 the RTC sent nine

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additional criminal referrals relating to Madison Guaranty to the U.S. Attorney for the Eastern District of Arkansas. These criminal referrals led to investigations by that U.S. Attorney's office, then by the Fraud Section of the Criminal Division of the U.S. Department of Justice, and then by regulatory Independent Counsel Robert Fiske, who was replaced in August 1994 by statutory Independent Counsel Kenneth Starr.

In 1987 Seth Ward sued Madison Guaranty to collect on the fictitious cross-loan note issued to him, claiming that it was a valid and lawful obligation owed by Madison Guaranty. Initially, in 1988, Ward's suit was successful and he received a favorable judgment from the Court. Webb Hubbell monitored the trial proceedings and then assisted Ward in his efforts to collect the judgment. Ward and the RTC ultimately settled the matter.

Thus, each of the three pending investigations -- the civil investigation of Madison's failure; the criminal investigation of the failure; and Ward's suit on the fraudulent cross-loan note -- implicated the conduct of attorneys at the Rose Law Firm. They had provided professional services to Madison Guaranty and, particularly, had provided legal counsel in connection with the cross-loan.

When, as it did in 1989, the FDIC takes over a failed institution and conducts a civil lawsuit against the professionals who provided services to the bank, the FDIC does not, typically, use its own attorneys to bring the suit. Rather, the FDIC (and RTC) hire outside counsel to represent them (and the failed institution) in the suit. In choosing whom to hire, the FDIC carefully screens potential lawyers and implements certain rules, known as conflict of interest rules. These conflict of interest rules serve two functions: First, broadly and generally, the FDIC

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only hired law firms that were representing the FDIC on behalf of other failed institutions; it rarely hired any firms that represented, for example, directors, lawyers, or accountants who had been charged with negligent conduct. Second, and more particularly, because a law firm's earlier work for an institution that failed was, itself, subject to potential examination, the FDIC generally would not hire a law firm to represent the failed institution in a suit against professionals if the law firm had, itself, provided professional services to the bank that might arguably have contributed to the institution's losses.

The FDIC's conflict of interest rules also served an important function in ensuring the FDIC's success in lawsuits it brought on behalf of failed institutions. Typically, when a professional is sued by a failed institution for negligence, the professional answers by asserting that his conduct was not negligent. The professional will frequently invoke the greater negligence of other professionals as a defense of his own conduct. Thus, for example, the accountant will say (as Frost & Co. did) that the officers or directors engaged in fraud and that the lawyers were the truly negligent party. The FDIC's conflict of interest rules were, therefore, vital to insure that by hiring only law firms that had no connection to the failed institution, the FDIC's lawyers would never be the subjects of a counter-charge of negligence. The FDIC was entitled to be certain that the lawyers it hired aggressively sought recovery from any and every source responsible for causing the loss to the depositors and the American taxpayers without having to wonder if the lawyers were hesitating because of prior relationships the lawyers had with the prospective defendant.

The partners at the Rose Law Firm were painfully aware of these conflict of interest rules.

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In the mid-1980s Rose had failed to disclose a significant conflict of interest resulting from prior work done by one of its partners, Joseph Giroir, to the FHLBB, another federal regulatory agency. As a result, when the conflict was discovered Rose was denied the opportunity to work for the FHLBB. Worse yet, Giroir and Rose were threatened with suit by the federal government and ultimately paid a substantial settlement to the United States because of losses to the institution arising from loans on which Giroir and Rose had worked.

In 1989, Rose (specifically Webb Hubbell) was hired to represent the FDIC's interest on behalf of Madison Guaranty in the Frost litigation. In securing the FDIC as a client, Rose and Hubbell concealed substantial conflicts of interest from the FDIC (and later the RTC). Hubbell failed to disclose: 1) Rose's and Mrs. Clinton's prior work for Madison Guaranty on Castle Grande; 2) his own representation of his father-in-law, Seth Ward, in connection with Ward's suit against Madison Guaranty; and 3) Rose's use of a Frost audit while representing Madison Guaranty before the Arkansas Securities Department ("ASD"). Rose and the RTC eventually settled the suit against Frost for $1 million.

Rose's and Mrs. Clinton's connection to the failed Madison Guaranty became a matter of media interest in early 1992, as Governor Clinton was campaigning for President. Vince Foster, Webb Hubbell, and Mrs. Clinton reviewed Rose's and Mrs. Clinton's past representation of Madison Guaranty in order to respond. Rose Law Firm files and its Madison Guaranty billing records were retrieved from storage and examined by Hubbell and Foster. Foster annotated at least one copy of the billing records with some notes to Mrs. Clinton. Foster created a chronology of the representation; and Mrs. Clinton and Foster drafted a statement that ultimately

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was not released. After Governor Clinton's election in November 1992, billing records and original files detailing Rose's and Mrs. Clinton's work for Madison Guaranty were removed from the firm.

Later, in 1993 the press reported that in representing the FDIC and the RTC in the Frost litigation, Hubbell had deliberately concealed Rose's prior connection to Madison Guaranty. These allegations caused those federal agencies to examine whether Rose had violated their conflict of interest rules. The FDIC Legal Division conducted an examination, and, based upon the statements of then-Associate Attorney General Webb Hubbell, concluded that Rose's conduct was proper.

At Congress's request, during 1994 and 1995, the FDIC's Office of Inspector General ("FDIC-OIG") and RTC's Office of Inspector General ("RTC-OIG") further examined Rose's representation of those agencies. Hubbell was referred for criminal prosecution for the false statements he had made to the FDIC-OIG and the RTC-OIG. Because substantial relevant evidence, particularly Rose's billing records, was not produced or provided, those agencies gave materially incomplete testimony to the United States Congress, particularly regarding Mrs. Clinton's role in the representation of Madison Guaranty, which they believed was minimal. It was not until January 1996, when Mrs. Clinton produced copies of Rose's Madison Guaranty billing records, that the investigators who had been involved in the FDIC-OIG and the RTC-OIG investigations understood the extensive legal work that she had done for Madison Guaranty. The FDIC-OIG then reopened its investigation (the RTC terminated on December 31, 1995, and its functions merged with the FDIC). The Independent Counsel ultimately prosecuted Hubbell for

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concealing Rose's conflicts of interest and connection to Madison Guaranty, and he pleaded guilty to one felony count.

This Chapter summarizes the evidence relating to these events. It begins with a summary of Hubbell's statements to the FDIC and RTC -- statements that misled those investigators. The Chapter then summarizes the evidence relating to two events occurring outside of the Rose firm between 1986 and 1992 -- the criminal investigation of Madison Guaranty and Ward's suit against Madison Guaranty. The Chapter then summarizes the evidence relating to Rose's conflict of interest dispute with the FHLBB and to Rose's representation of the FDIC and RTC in the suit against Frost. The Chapter concludes with a description of events relating to the 1992 campaign and the early months of the Clinton Administration relating to the Rose Firm's representation of Madison Guaranty.

The evidence summarized in this Chapter is, in the judgment of the Independent Counsel, of dual significance. First, and most obviously, these facts are part of the historical record -- they have significance in their own right. Hubbell's conflict of interest and his concealment of those conflicts from the FDIC and RTC (both at the time Rose was retained and in his subsequent false statements to those agencies) resulted in his indictment in 1998 and his guilty plea to one felony count in 1999.

Second, the historical record provides a background against which to measure subsequent claims by individuals who would be expected to have knowledge of past events that they do not recall those events. As detailed more fully in Chapter 3 of this Part, since the Department of Justice and Independent Counsel Fiske's investigations began in 1994, and continuing through

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this Independent Counsel's investigation, many individuals, including Mrs. Clinton, testified under oath and asserted a lack of recollection of events relating to Rose's representation of Madison Guaranty. They asserted, for example, that the intervening ten years had dimmed their memories.[995] Although it was true that the work had been performed ten years earlier, it was also true that these events had taken on renewed significance in the 1992 Presidential campaign, resulting in a more recent review by the participants of their previous conduct. Thus, the Independent Counsel fully considered the claims of lack of memory against the evidence of recently refreshed recollection.

II. FINDINGS

The Independent Counsel reports the following findings and conclusions:

With respect to the initial investigations of Madison Guaranty:

- The FHLBB concluded that Madison Guaranty was insolvent and that Jim McDougal had diverted funds to himself and other insiders.
- The FHLBB concluded that the Castle Grande land transaction involved fraudulent "land flips."
- Madison Guaranty's outside counsel, Borod & Huggins, concluded in March 1987 that the McDougals used Madison Guaranty to benefit themselves and other insiders.
- Borod & Huggins also concluded that several individuals, including Seth Ward, may have engaged in criminal violations.

With respect to the Rose Law Firm's solicitation of business from the FSLIC:

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[995] "Well, I did work. I just can't remember ten years from the work exactly what the work was." H. Clinton 4/22/95 Depo. at 43.

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- Rose asked to represent the FSLIC in the conservatorship of First South.

- The FHLBB asserted a malpractice claim against Rose because of Rose partner Joe Giroir's conduct.

- Rose partners, including Hubbell, Foster, and Mrs. Clinton, were made aware of the malpractice allegations.

- Rose settled the malpractice claim for $3 million, $500,000 of which was paid by Rose partners.

With respect to Seth Ward's lawsuit against Madison Guaranty:

- In 1987, Seth Ward sued Madison Guaranty to collect on the $300,000 unfunded April 7, 1986 promissory note.

- Madison Guaranty counterclaimed that Ward's commissions were fraudulent.

- After Ward's initial victory in the trial court, Webb Hubbell assisted Ward in filing Writs of Garnishment to collect Ward's judgment.

With respect to Madison Guaranty's lawsuit against Frost & Company:

- Madison Guaranty sued accountants Frost & Company for malpractice.

- The FDIC hired Rose to represent it when Madison Guaranty went into receivership.

- In securing the representation of Madison Guaranty from the FDIC, Hubbell failed to disclose:

    - Rose's prior work for Madison Guaranty before the Arkansas Securities Department;

    - Mrs. Clinton's prior legal representation of work for Madison Guaranty in the Castle Grande transaction;

    - Hubbell's representation of Ward and POM, a Ward corporation;

    - Hubbell's close familial relationship with Seth Ward; and

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- Rose's representation of a Frost partner.

- When later questioned about the nature of his relationship to Ward, Hubbell told the FDIC they were "not particularly close" and that he had "never represented" Ward.

- As part of his work for the FDIC and RTC in the Frost litigation, Hubbell and others reviewed:

  - Mrs. Clinton's and Rose's billing records relating to the representation of Madison Guaranty in 1985 and 1986;

  - The 1986 FHLBB report describing fraudulent land flips in the Castle Grande transaction; and

  - The Borod & Huggins report describing possible criminal conduct by Ward.

- When subpoenaed during the Frost litigation, former ASD Commissioner Beverly Bassett Schaffer reminded Hubbell of Rose's representation of Madison Guaranty, including Mrs. Clinton's work before the ASD, and suggested that it created a conflict of interest.

With respect to Governor Clinton's 1992 presidential campaign:

- In early 1992, the national news media asked about Governor and Mrs. Clinton's relationship with Jim McDougal, Whitewater Development, and Madison Guaranty.

- Because of the media inquiries, Hubbell and Foster collected and reviewed Rose records relating to Rose's representation of Madison Guaranty, including Mrs. Clinton's billing records.

- Campaign documents, including a draft press statement written by Mrs. Clinton with Hubbell's and Foster's assistance, asserted:

  - Rick Massey, and not Mrs. Clinton, was the source of Rose's Madison Guaranty business:

  - Mrs. Clinton's involvement with soliciting McDougal started in April 1985 when she asked him to pay past money owed to Rose, which the firm

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demanded before doing additional work; and

- Mrs. Clinton did not represent anyone before an Arkansas state agency.

- After reviewing the Rose billing records, Foster created a detailed chronology showing that $5,000 of Madison Bank and Trust's "old" bill was paid in October 1984.

- Campaign spokespersons asserted that Massey, not Mrs. Clinton, brought Madison Guaranty to Rose as a client.

With respect to Rose's conflict of interest in representing the FDIC in Frost:

- 1993 press accounts caused the FDIC to investigate whether its conflict of interest rules had been violated.

- Hubbell assured FDIC attorney April Breslaw that Rose's prior Madison Guaranty work had been minimal.

- In late 1993 and early 1994, the FDIC Legal Division spoke directly with Hubbell, who said that:

  - He was not aware of Rose's prior Madison Guaranty representation at the time when the FDIC hired Rose;

  - He did no legal work for Seth Ward;

  - He did not review the Borod & Huggins report; and

  - Rose's Madison Guaranty representation was limited to lending and collection work.

- As a result of these statements, the FDIC issued a report dismissing the conflict of interest allegation.

- In 1994, at Congress's request the FDIC-OIG and the RTC-OIG reexamined Rose's alleged conflicts of interest.

- Hubbell told the OIGs that:

  - He did not work on the Castle Grande transaction;

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- He never represented Ward in dealings with Madison Guaranty;
- He did not review the Borod & Huggins report until "absolutely necessary"; and
- He had no knowledge of or involvement in Ward's agreements with Jim McDougal and Madison Financial.

- Because substantial evidence had not been produced or provided, the FDIC-OIG and the RTC-OIG gave inaccurate testimony to the United States Congress about the alleged Rose conflict.
- In June 1999, Hubbell pleaded guilty to concealing by scheme a material conflict of interest from the FDIC and the RTC.

III. FACTUAL SUMMARY

A. Discovery of Rose's Conflicts and Hubbell's Statements to FDIC and RTC Investigators.

Chapter 1 of this Part detailed the myriad work that the Rose Law Firm, Hubbell, and Mrs. Clinton did for Madison Guaranty -- representing the institution before state regulators, and in connection with the purchase and development of the IDC/Castle Grande property. When Hubbell later sought to represent Madison Guaranty on behalf of the FDIC and the RTC, he concealed this prior representation. Still later, when public reports surfaced that Hubbell might have concealed the prior representation, the FDIC and the RTC investigated what had occurred. During the course of those investigations Hubbell again concealed his role and that of Mrs. Clinton in the representation of Madison Guaranty, making false statements to investigators and, ultimately, misleading them to such an extent that the investigators later gave inaccurate testimony to the United States Congress. This Section details FDIC and RTC investigations of Hubbell and identifies the statements made by Hubbell, which, upon further investigation, proved

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to be false and inaccurate.

1. FDIC Legal Division and the RTC Investigated Rose Conflicts of Interest.

On September 28, 1993, April Breslaw, the FDIC attorney who had had supervisory responsibility for the Madison Guaranty case against Frost & Co., received a call from Washington Post reporter Susan Schmidt.[996] Schmidt questioned Breslaw about the work Rose had performed for Madison Guaranty prior to the Frost case -- Schmidt asked whether Rose had a conflict of interest in the suit and the FDIC had been wrong to hire Rose.[997] Breslaw told Schmidt she was unaware of any work Rose had performed for Madison Guaranty prior to Frost.[998] Breslaw called Rick Donovan, a Rose attorney who had worked on the Frost case, at 6:15 p.m. on September 28, 1993, but did not immediately hear back from Donovan.[999] Breslaw then called Hubbell at approximately 6:25 p.m.[1000]

Rose member Ron Clark and Donovan called Breslaw the next morning.[1001] Clark had no personal knowledge of Rose's work for Madison Guaranty before its failure, and Donovan "did

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[996] Breslaw 10/23/95 Senate Banking Comm. Depo. at 67-68; Breslaw 6/6/95 Senate Banking Comm. Depo. at 33-34.

[997] Hearings on the Failure of Madison Guaranty Savings and Loan Association and Related Matters Before the House Comm. on Banking and Financial Services, 104th Cong. 34-35 (Aug. 10, 1995) (testimony of A. Breslaw) [hereinafter "House Banking Comm. Hearing"].

[998] Id.

[999] Breslaw 10/23/95 Senate Banking Comm. Depo. at 95-96; Telephone Log (Sept. 1993) (Doc. No. MU-00000027).

[1000] Telephone message slip from April Breslaw to Judge H[ubbell] (Sept. 28, 1993) (Doc. No. MU-00000023).

[1001] Breslaw 10/23/95 Senate Banking Comm. Depo. at 100-01.

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not really know the facts very well."[1002] At 10:57 a.m. on September 29, 1993, Breslaw called Hubbell's office at the Justice Department,[1003] but he did not immediately return her call.[1004]

At 11:41 a.m., Breslaw e-mailed two RTC colleagues:

> I have now reviewed our old files and spoken to the Rose partners who worked with me on the Madison case. . . . Apparently, a Rose Firm lawyer spent a short amount of time in 1985 or 1986 evaluating a plan to help Madison raise capital. Susan Schmidt believes that the Rose lawyer was Mrs. Clinton. According to the Rose partners that I spoke with Mrs. Clinton did NOT work on this project. We can't find any documentation on this old work, so I don't believe that we can offer an opinion. For what it's worth, the Rose people believe that we don't have documentation because the project was so small that they doubt that they opened a file or billed for the time spent. In any event, the firm's press spokesman is Ron Clark. . . . Bottom line: I don't have any reason to think that the Rose firm misled us about conflicts. . . . I am not aware of any evidence to support the "cover up" allegation.[1005]

Breslaw spoke with Hubbell a day or two later, and she testified that:

> [h]e told me that he had not known that others in the Rose Law Firm had represented Madison before it failed; that he had not known that in 1989, when I retained him at the Rose firm, to represent the government in the accounting malpractice case. To the best of my current understanding, the representation

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[1002] Id. at 102.

[1003] Id. at 102-03; Telephone Log (Oct. 1993) (Doc. No. MU-00000038) (phone record of a 0.3-minute call by Breslaw to 202-514-9500, which was the number of the Associate Attorney General). See Telephone message slips from April Breslaw and Bill Kennedy to Judge H[ubbell] (Sept. 29, 1993) (Doc. No. MU-00000024). The first message indicates that Breslaw called Hubbell at 11:10 a.m. on September 29, 1993. The second message indicates that Bill Kennedy called Hubbell at 1:35 p.m. on September 29, 1993. Additionally, Document Number MU-00000037 is a phone record of a one-minute call by Breslaw at 6:17 p.m. on September 29, 1993 to 514-2000, which is the phone number of the Department of Justice.

[1004] Breslaw 10/23/95 Senate Banking Comm. Depo. at 107.

[1005] E-mail from April A. Breslaw to Stephen J. Katsanos and Felisa M. Neuringer (Sept. 29, 1993, 11:41:51 EDT) (Doc. Nos. MU-00000002 through 03). Breslaw testified that she thought Donovan told her that Hillary Clinton did not work on the project that involved raising capital for Madison Guaranty. Breslaw 10/23/95 Senate Banking Comm. Depo. at 104-105.

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> occurred in 1985 or 1986. So you have this scenario in which the firm does a relatively small volume of work in 1985 or 1986, and then they are retained several years later to represent the government. So it was plausible to me, in the fall of 1993, when I had this conversation with Hubbell, that he just had not known in 1989 about the prior representation.[1006]

Hubbell left Breslaw with the impression that Hubbell had not personally represented Madison before it failed and that Rose had not had an effective way of checking conflicts in 1989.[1007] Breslaw also had the impression from Hubbell that Rose had done "a relatively small amount of work" for Madison Guaranty before it failed.[1008] According to Breslaw, Hubbell's story was "basically consistent with what Donovan had told [her]."[1009] At that time, Hubbell knew about Rose's 1985-86 work for Madison Guaranty -- he had just reviewed the billing records during the 1992 campaign -- and he later admitted as much.[1010] April Breslaw then called

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[1006] Breslaw 6/6/95 House Banking Comm. Depo. at 37-38. See id. at 145 (Hubbell asserted that in 1989 when Rose was engaged to handle the Frost litigation he had not been aware of Rose's prior representation); Breslaw 10/23/95 Senate Banking Comm. Depo. at 69, 76-79, 101-03, 106-09, 118-20, 140-42, 150-57 (generally discussing Breslaw's telephone conversation with Webb Hubbell in September 1993, including phone records related to that telephone conversation).

[1007] Breslaw 10/23/95 Senate Banking Comm. Depo. at 108.

[1008] Id.

[1009] Id. at 109. See id. at 156 ("My general recollection is that the things he [Hubbell] had to say were consistent with what Donovan and I believe Clark had already told me"); Senate Whitewater Comm. Hearing, supra note 147, at 27 (Nov. 30, 1995) (testimony of A. Breslaw) ("Neither [Rick Donovan nor Webster Hubbell] had a strong recollection of the [pre-Frost Madison] representation, which apparently took place eight years earlier, in 1986").

[1010] Senate Whitewater Comm. Hearing, supra note 147, at 19-21 (Feb. 7, 1996) (testimony of W. Hubbell) ("I knew in '85 and '86 that the firm had closed the IDC loan, yes"); Hubbell 8/22/96 GJ at 21 ("I remember talking to Mr. Massey, and I remember talking to Mrs. Clinton, and I remember talking to my father-in-law about the work that was being done, yes . . . At the time [1985-86], yes").

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Hubbell and he asserted that he had disclosed Mrs. Clinton's prior representation of Madison Guaranty.[1011] Rick Donovan confirmed speaking with Hubbell, and that Hubbell said he was "pretty sure" he had disclosed Rose's pre-Frost work for Madison Guaranty to April Breslaw.[1012]

Breslaw has since testified about her conversation with Schmidt and her September 29 e-mail:

> What I did not tell her was that this was the first time that I had ever heard the suggestion that the Rose firm had represented Madison at all. And so that was the first time that that had really been suggested to me. As a result because I was personally puzzled by hearing this from a reporter, I telephoned the Rose Law Firm and I believe I spoke with Rick Donovan and someone else mentioned in the e-mail, Ron Clark, and asked what is this about? Did you guys represent Madison before it had failed? As reflected in this e-mail, they told me that they didn't think that the Rose firm had done that, but it was apparent from the conversation that they were vague themselves on the facts. So I came out of the conversation with them still feeling puzzled, feeling that I was probably talking to people who didn't know one way or the other, but who were possibly trying to calm a former client who was a little annoyed at being -- at hearing about a potential conflict from a reporter and not from them. So I believe I placed one call to Web[b] Hubbell,

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[1011] Senate Whitewater Comm. Hearing, supra note 147, at 163-65 (Dec. 1, 1995) (testimony of W. Hubbell) (discussing the September 1993 Hubbell-Breslaw telephone conversation in general terms); Hubbell 6/9/95 GJ at 53 (indicating that Rick Donovan told him that April Breslaw was going to call him to ask about "whether we had made full disclosure of our conflicts at the time we took on the representation"); Hubbell 4/10/95 Int. at 21 ("HUBBELL told BRESLAW he thought he had disclosed that information [Rose's work for Madison Guaranty during 1985 and 1986] to her. The conversation lasted maybe two to three minutes, and HUBBELL is certain there was no mention of an RTC referral"); Hubbell 3/16/95 FDIC-OIG Int. at 10 ("The last time he talked with Breslaw was when she called him while he was at the Department of Justice in September 1993. She said that people were asking her questions about what she was told when she hired Rose for the Madison Conservatorship. She did not say who was asking. He told her that when he accepted the case they discussed that Rose had done prior work for Madison and that his father-in-law was suing them. Breslaw told him that she did not recall him telling her those things and he responded that it was a brief conversation and he could see how she could have forgotten").

[1012] Donovan 1/21/98 GJ at 50.

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who, at that time, was Associate Attorney General.[1013]

On September 30 or October 1, 1993, FDIC Deputy General Counsel Jack Smith also received a call from Susan Schmidt. She asked questions about alleged conflicts related to Frost, David Hale's September 23, 1993 indictment, and Jim McDougal.[1014] Schmidt told Smith that April Breslaw handled the Frost case for the FDIC, and Smith called Breslaw.[1015] On October 13, 1993, Breslaw sent a memorandum to Jack Smith entitled the "Inquiry from Susan Schmidt, Washington Post." Breslaw noted that Madison Guaranty's loans to Seth Ward "had been made long before the thrift closed," that "[t]he scope of the Rose Firm's representation of Madison prior to its failure is in dispute," and that "current partners at the Rose Firm have stated repeatedly that the inquiry to the Arkansas securities commissioner was a brief, 'What are the procedures if Madison decides to give this a try?' conversation."[1016] Breslaw also wrote:

> I have no reason to believe that the Rose Law Firm was on retainer to Madison "for 30 months during the mid-1980's," as Ms. Schmidt says she has been told. We have no documentation which suggests this. . . . When the Rose firm was substituted as government counsel in the Frost case, Mr. Hubble [sic] represented that the project did not pose conflicts of interest. I do not recall any specific discussion of prior work for Madison. I believe that the first time I became aware

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[1013] Breslaw 6/6/95 Senate Whitewater Comm. Depo. at 36-37. Breslaw's conversations with Schmidt, Hubbell, and Donovan became the topic of Congressional interest in 1995, as those conversations occurred contemporaneously with the nine RTC criminal referrals that related to Madison Guaranty. "I was not pleased to have this kind of inquiry coming in from a reporter under circumstances in which I think it is clear that there is no written disclosure from the Rose Law Firm of this issue," Breslaw later testified. Breslaw 10/23/95 Senate Whitewater Comm. Depo. at 94.

[1014] Smith 2/5/98 GJ at 4-5, 33-34.

[1015] Id.

[1016] Memo from April Breslaw, RTC attorney to Jack Smith, FDIC Deputy General Counsel (Oct. 13, 1993) (Doc. No. 281-00002081).

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> of these allegations was when the Washington Post published a story which echoed the New York Times material in March 1992. (Copy attached.) By then, the Frost case had settled.[1017]

On Wednesday, November 3, 1993, an article by Susan Schmidt appeared in the Washington Post.[1018] The article quoted Rick Donovan as saying, "I don't think we ever billed them [Madison Guaranty] a dime -- maybe we did -- I don't know."[1019] Donovan said that -- despite his actually doing some of the prior work for Madison Guaranty -- he did not remember that prior work:

> I remember [the conversation] like it was yesterday. I picked up the phone and there's this Susan Schmidt from the Washington Post. I'm an Arkansas boy. You know, this is big stuff. Boy, I'm going to really talk to her. And I did say that and was totally wrong. I had -- you know, that shows you what I knew about the previous work. And it shows you I wasn't even making the connection with the work that I had done with those memos. Yeah, I said all of that. I said a bunch of other stuff, too, that she didn't print.[1020]

As a result, the FDIC Legal Division next initiated a review of Rose's work on Frost. Two high-ranking FDIC Legal Division attorneys, Jack Smith and Tom Schulz, directed another Legal Division attorney, John Downing, to review and investigate the matter.[1021] Downing began

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[1017] Id.

[1018] Susan Schmidt, Regulators Say They Were Unaware of Clinton Law Firm's S&L Ties, Wash. Post, Nov. 3, 1993, at A4.

[1019] Id.

[1020] Donovan 1/6/98 GJ at 101; see also id. at 51 (discussing Donovan's conversation with Susan Schmidt).

[1021] See Memo from Thomas A. Schulz, Assistant General Counsel, to Douglas Birdzell, Special Counsel (Nov. 16, 1993) (Doc. No. 281-00002011) (the memorandum states Jack Smith requested Schulz to look into whether there was a conflict of interest with the Rose Law Firm. Schulz directed Birdzell to deliver information on the matter to John Downing); Downing 1/22/98 GJ at 5-8.

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his investigation during November 1993.[1022] He interviewed April Breslaw, Rick Donovan, and Gary Speed, and reviewed various documents from Frost.[1023]

On November 4, 1993, April Breslaw drafted a statement at Jack Smith's request entitled "Congressional Testimony: Rose Law Firm."[1024] That statement was to serve as a response to the November 3 Washington Post story.[1025] Breslaw's statement defended her decision to retain Rose for Frost, and rebutted claims that there were improper, undisclosed conflicts of interest between Rose and the FDIC. With regard to Ward, Breslaw wrote:

> As to the Ward potential conflict, the Post implies that Ward's relationship to Madison was fully disclosed to the FDIC. Though Mr. Ward's debt and commission dispute were disclosed, his work for Madison's real estate subsidiary was not. At most, however, this matter involves the appearance of a non-representational conflict. Further, Ward did not benefit from the Rose Firm's Madison work. The Frost case publicized Ward's credit problems and he ultimately lost his commission claims.[1026]

On November 16, 1993, John Downing of the FDIC Legal Division interviewed Breslaw. The report of that interview stated that "[i]f she had been told by Rose of some prior representation of Madison, she states she would have brought that to the attention of John

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[1022] Downing's notes on Rose Law Firm Possible Conflict Investigation (undated) (Doc. Nos. 281-00002012 through 27); Downing 1/22/98 GJ at 5-8.

[1023] Breslaw 4/7/94 FDIC/OIG Int.; Donovan 10/4/94 FDIC/OIG Int.; Speed 10/5/94 FDIC/OIG Int.

[1024] "Congressional Testimony: Rose Law Firm" drafted by April Breslaw (Nov. 4, 1993) (Doc. No. 281-00002060).

[1025] Memo from April Breslaw, RTC attorney to Thomas Schulz, Assistant General Counsel (Nov. 6, 1993) (Doc. No. 281-00002058).

[1026] "Congressional Testimony: Rose Law Firm" drafted by April Breslaw (Nov. 4, 1993) (Doc. No. 281-00002060).

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Thomas [her supervisor]. However, she does not recall any such disclosure by Rose."[1027] Breslaw also told Downing, "She has no personal knowledge of any representation [of Madison] by Hil[l]ary Clinton. . . . She is unaware of anybody else within the FDIC who would have knowledge of prior representation of Madison by Rose."[1028]

On January 10, 1994, Breslaw wrote another e-mail to colleagues at the FDIC/RTC:

> When Madison became the government's responsibility in March 1989, I replaced the institution's counsel with the Rose firm. I did this because Madison's lawyer was severely conflicted. That firm was defending directors and officers in 3 separate lawsuits filed by the FDIC. The Rose firm had no such conflicts. . . . As I've told the FDIC investigators, I do not recall the Rose firm mentioning that it had previously represented Madison. Webb Hubble [sic] has said that he told me about this. However, I don't remember such a conversation and there is no correspondence which documents it. I was informed that Webb's father-in-law (Seth Ward) had business dealings with Madison. However, no one at the Rose firm ever represented Ward. . . . Further, the fact that Webb was related by marriage to someone who had dealing [sic] with Madison does not constitute an actual conflict. At most, this situation could be described as a potential "non-representational" conflict. If this kind of situation arose today in an open matter, I bel[ie]ve that relevant committees would waive it.[1029]

Breslaw's statements and e-mails demonstrate that during late 1993 and early 1994, she believed Hubbell had accurately stated he did not represent Seth Ward and that, as she wrote on January 10, 1994, "no one at the Rose firm ever represented Ward."[1030]

[1027] Memo from John Downing, FDIC attorney, legal division to File (Nov. 16, 1993) (Doc. No. 281-00002004).

[1028] Id.; see also Downing 1/22/98 GJ at 8 (indicating that Breslaw stated consistently that she had no knowledge of any work that the Rose Law Firm had done for Madison Guaranty prior to the Frost case).

[1029] E-mail from April Breslaw to Julie Yanda (Jan. 10, 1994) (Doc. No. CZ-00000573 through 74).

[1030] Press reports charged that Breslaw was a "tough" FDIC attorney who went "soft" on

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From December 1993 to January 1994, the Whitewater/Madison controversy was, according to Hillary Clinton, "the subject of much conversation and concern."[1031] Carl Stern, then Director of the Justice Department's Office of Public Affairs, sat down with Hubbell on three or four occasions to discuss the allegations of improper conflicts of interest related to the FDIC and Madison Guaranty.[1032] Hubbell was "furious" and seemed "genuinely angry" about the allegations, and told Stern that he believed he had been literally correct in his FDIC certifications.[1033] Hubbell told Stern he viewed the FDIC as Madison Guaranty's successor, and that the FDIC and Rose had a "unity of interest" rather than a conflict because Rose and Madison Guaranty were on the same side in 1985 and 1986 when Rose represented Madison Guaranty, and again when Rose represented the FDIC in the Frost case.[1034]

As the FDIC Legal Division Rose review continued throughout November and December of 1993, Jack Smith, Tom Schulz, and John Downing discussed whether they should interview Webster Hubbell, then the Associate Attorney General. "The allegations were that Webster Hubbell was the managing partner of [the Frost litigation], and that it was Webster Hubbell who

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Rose. See, e.g., F. Murray, 'Tough' Federal Lawyer Went Soft On Hubbell In S&L Case, Wash. Times, Feb. 15, 1994, at A1 ("A government lawyer considered a hard-liner against law-firm conflicts of interest took relaxed stands on the role of the Rose Law Firm's Webster L. Hubbell in a $10 million lawsuit to recoup taxpayer losses from Madison Guaranty Savings and Loan Association"). She later admitted that she felt mildly threatened by the Legal Division's review. Breslaw 10/23/95 Senate Whitewater Comm. Depo. at 187.

[1031] H. Clinton 7/22/95 Depo. at 40.

[1032] Stern 1/21/98 Int. at 1.

[1033] Id.

[1034] Id.

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had conflicts of interest which hadn't been revealed to us," Smith testified. "So, naturally, the simple thing to do was just ask him the facts, and especially since April Breslaw seemed to be a little bit hazy on her recollection."[1035]

On January 5, 1994, the Washington Post published an article by Susan Schmidt and Michael Isikoff discussing the growing controversy surrounding Seth Ward, Webster Hubbell, Hillary Clinton, Madison Guaranty, the FDIC, and the RTC.[1036] The article stated:

> How much the FDIC knew when it hired Rose [to handle Frost] about the relationships among Madison and the firm and its partners is unclear. Hubbell has contended that his dealings with Madison were fully disclosed. A series of internal FDIC memos at the time warned against hiring Hubbell due to conflicts involving his father-in-law, and FDIC and RTC lawyers have been conducting an inquiry in recent weeks into whether the potential conflicts were properly reported.[1037]

On January 6, Smith and Downing met to discuss Rose, and Downing reminded Smith that they had decided to interview Hubbell.[1038] Jack Smith scheduled Hubbell's interview for January 11.[1039] On January 7, at Hubbell's request, Downing sent him a variety of Frost-related documents to review prior to his January 11 interview.[1040]

[1035] Smith 2/5/98 GJ at 10.

[1036] Susan Schmidt & Michael Isikoff, Arkansas Probe Sensitive From Start; Investigation of Collapsed S&L Affected by Links With the Clintons, Wash. Post, Jan. 5, 1994, at A1.

[1037] Id.

[1038] Smith 2/5/98 GJ at 12; Downing notes (Jan. 6, 1994) (Doc. No. 281-00002017).

[1039] Smith 2/5/98 GJ at 12; see Downing 1/22/98 GJ at 11; Downing notes (Jan. 6, 1994) (Doc. No. 281-00002017).

[1040] Downing 1/22/98 GJ at 9-11; Downing notes (Jan. 6, 1994) (Doc. No. 281-00002017). Included in the packet was a letter Hubbell had written on June 28, 1989 to David Paulson about Hubbell's relationship with Seth Ward.

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On January 11, Smith and Downing met Hubbell for about 40 minutes at his Department of Justice office.[1041] Hubbell told them, "At the time that Rose was retained he was not aware that they had represented Madison before the Arkansas securities commission and so [he] did not disclose [that representation] to FDIC."[1042] Hubbell also said Rose did some limited lending and collection work for Madison Guaranty several years before Frost. Hubbell claimed that he was not allowed to review the Borod & Huggins Report because it involved his father-in-law, Seth Ward.[1043]

Hubbell admitted attending the trial of Ward v. Madison Guaranty, but said he had no other involvement.[1044] Hubbell told Smith and Downing that he had not done legal work for Seth Ward.[1045] Downing later testified: "As a matter of fact, I believe Mr. Hubbell told me when we interviewed him that he had not had involvement with Mr. Ward in legal matters."[1046] Jack Smith and James Lantelme, another FDIC Legal Division attorney, later testified that Hubbell had not told them about the legal work he and Rose Law Firm had done for Seth Ward or about Hubbell's ownership interest in Ward's companies.[1047]

On November 24, 1993, Donovan had told John Downing he "did not recall that any procedure was established to keep information from being passed to the Wards that was obtained

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[1041] Downing 1/22/98 GJ at 11; Smith 2/5/98 at 13.

[1042] Hubbell 1/11/94 FDIC Int. at 1.

[1043] Id. at 1-2.

[1044] Hubbell 1/11/94 FDIC Int. at 2.

[1045] Id.; Downing 1/22/98 GJ at 13-14, 31; Smith 2/5/98 GJ at 18.

[1046] Downing 1/22/98 GJ at 31.

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during the Frost litigation."[1048]

Accordingly, Downing determined that there was a discrepancy between Hubbell and Donovan.[1049] On January 12, the day after Hubbell's interview, Downing called Donovan.[1050] Donovan told Downing that Rose "did not have a formal, written Chinese wall that would insulate Hubbell from information relevant to [Seth] Ward Sr.'s loans, but that informal procedures were followed."[1051] Donovan also told Downing that Hubbell "was not permitted to see" the Borod & Huggins Report.[1052]

On January 13, 1994, John Downing spoke with Jim Lantelme.[1053] Since 1989, Lantelme had served as a member of the various FSLIC, FDIC, and RTC conflicts committees.[1054] Downing's notes reflect the substance of their discussion:

> There was a question of how the [Hubbell-Ward] relationship appeared, but because it was fully disclosed and Hubbell had agreed not to do work for the Wards and had not done work previously, he [Lantelme] did not believe the Conflicts Committee would consider it to be a conflict. The further fact I mentioned, that there was apparently an informal procedure to insulate Hubbell

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[1047] Smith 2/5/98 GJ at 25; Lantelme 2/17/98 GJ at 49.

[1048] Downing notes of telephone conversation with Donovan (Nov. 23, 1993) (Doc. Nos. 281-00002046 through 47).

[1049] Downing 1/22/98 GJ at 15.

[1050] Id.

[1051] Downing notes of telephone conversation with Donovan (Nov. 23, 1993) (Doc. No. 281-00002047).

[1052] Id.

[1053] Lantelme 2/17/98 GJ at 42-43; Memo from John Downing regarding "conversations between myself and James Lantelme, and between Tom Schulz and Lauck Walton" (Jan. 1, 1994).

[1054] Lantelme 2/17/98 GJ at 42.

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from information about Ward, would also be viewed as significant.[1055]

Also, Lantelme told Donovan that any "collection and lending work would be 'no big deal.'"[1056] Lantelme later confirmed that he believed Hubbell had done no work for Seth Ward.[1057]

The media continued reporting allegations relating to Hubbell, Madison Guaranty, Rose, Whitewater, Hillary Clinton, and Seth Ward.[1058] Jack Smith spoke with Hubbell on January 19 and asked Hubbell if he had worked for Seth Ward on the Castle Grande loans, which Hubbell flatly denied.[1059]

The RTC Office of Contractor Oversight and Surveillance ("RTC-OCOS") reviewed

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[1055] Id. at 42-43; Memo from John Downing regarding "conversations between myself and James Lantelme, and between Tom Schulz and Lauck Walton" (Jan. 14, 1994).

[1056] Lantelme 2/17/98 GJ at 42-43; Memo from John Downing regarding "conversations between myself and James Lantelme, and between Tom Schulz and Lauck Walton" (Jan. 14, 1994).

[1057] Lantelme 2/17/98 GJ at 44, 54.

[1058] See, e.g., Howard Schneider & Sharon Walsh, Solid Arkansas Image Wilts in Capital Hear, Wash. Post, Mar. 15, 1994 at A1 (quoting Harry Don Denton as saying that "Hubbell structured . . . the wording for Seth's non-recourse note. . . . There wasn't anyone obligated to repay it"; and indicating that Justice Department spokesman Carl Stern stated that Hubbell had "no clear recollection of drafting it [the terms of Ward's Madison Guaranty loans]"); Hillary Clinton's law firm subject of federal probe, The Star-Ledger, A.P., Jan. 13, 1994 available at 1994 WL 9401754 (discussing Ward's Madison Guaranty loans and indicating that "[t]hrough a Justice Department spokesman, Hubbell said he told the FDIC in 1989 about Ward's relationship to the thrift, and was told that the situation presented no conflict"); and Jerry Seper, Hillary Clinton's S&L ties probed Official hired away by dying thrift, Wash. Times, Jan. 12, 1994, at A1 ("Raising further conflict concerns are court records showing that Mr. Hubbell's father-in-law, Seth Ward, was an officer of a Madison real estate subsidiary at the time Mr. Hubbell agreed to handle the case").

[1059] Smith 2/5/98 GJ at 28.

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Rose at the same time as the FDIC Legal Division.[1060] The RTC-OCOS investigation "focused only on whether or not Rose disclosed its previous representation of Madison to the FDIC and RTC."[1061] The RTC-OCOS did not interview any then current or former Rose attorneys, but it did receive information and documents from April Breslaw, and the RTC-OCOS reviewed the documents.[1062]

RTC-OCOS issued a report on February 8, 1994, finding that:

1) Rose represented Madison Guaranty prior to its failure;

2) Rose submitted the Frost audits on Madison Guaranty's behalf to the Arkansas Securities Department;

3) Webb Hubbell "was present at the trial of the Seth Ward matter and appeared to have been an interested (indirectly) participant in the Ward proceedings;" and

4) Seth Ward II had a suit against Madison Guaranty.[1063]

The RTC-OCOS also found that Rose did not disclose these matters during the Frost case, although it observed that April Breslaw had learned of the Ward matters.[1064]

Shortly thereafter, on February 17, 1994, Jack Smith spoke with Hubbell a final time. Hubbell told Smith he "did not feel then that the Ward litigation was an obstacle to taking the

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[1060] RTC-Office of Contractor Oversight and Surveillance Inquiries and Investigations Branch, Report on the Rose Law Firm, RTC/OCOS - T94002 - WA (Feb. 8, 1994) (Doc. Nos. 006-DC-00000030 through 38).

[1061] Id. at 1 (Doc. No. 006-DC-00000032).

[1062] Id. at 1-3 (Doc. Nos. 006-DC-00000032 through 34).

[1063] Id. at 3-4 (Doc. Nos. 006-DC-00000034 through 35).

[1064] Id. at 4 (Doc. No. 006-DC-00000035).

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Frost engagement."[1065] Later that day, the FDIC Legal Division issued its report, and sent Hubbell a copy.[1066] Hubbell read the report and faxed a copy to the White House.[1067]

The FDIC report, unlike the RTC-OCSC report, cleared Hubbell and Rose of wrongdoing. Why one report found wrongdoing while the other did not is largely explained by one fundamental assumption made by the FDIC: "The whole report was founded on the fact that [Webster Hubbell] had told the truth," Jack Smith later testified.[1068] The FDIC Legal Division Report became quite controversial with members of Congress. "One of the accusations coming from the Hill was that there must be some plot in the FDIC to get the White House out of this, or that people -- we were being pressured by the White House," Jack Smith later recalled. "They were wanting our phone logs to see if there was any phone calls to the White House. And maybe the President had called me up and told me to write this. But, of course, none of that happened."[1069]

[1065] Smith 2/5/98 GJ at 28-29.

[1066] FDIC Report on the Retention of the Rose Law Firm (Feb. 17, 1994); D. Jones 1/22/98 GJ at 11-13; Hubbell 3/16/95 FDIC-OIG Statement at 11. See February 4, 1994 draft of the FDIC Legal Division's report on the Rose Law Firm.

[1067] Hubbell 3/16/95 FDIC-OIG Int. at 11. During his March 16, 1995 interview with the FDIC's Office of Inspector General, Hubbell stated:

> The Legal Division sent him [Hubbell] a copy of their report the day it was made public. He had not seen a draft of their report nor had he discussed their findings with them prior to the time the report was issued. He read the report and agreed with their findings.

Hubbell 3/16/95 FDIC-OIG Int. at 11 (emphasis added).

[1068] Smith 2/5/98 GJ at 43; see also D. Jones 1/22/98 GJ at 13 ("Q. With regards to the factual representations made in the report, the report relied on statements Webster Hubbell made to the Legal Division, correct? A. Among other things, yes").

[1069] Smith 2/5/98 GJ at 46.

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On February 24, the Senate Banking Committee held a hearing on the Legal Division Report. Senator Alfonse D'Amato challenged the report and asked FDIC official Andrew Hove to conduct an investigation.[1070] On March 2, 1994, John E. Ryan, the Deputy and Acting Chief Executive Officer of the RTC, asked the RTC-OIG to investigate the conflict of interest allegations against Rose.[1071]

2. The FDIC and RTC Offices of Inspector General Investigated the Rose Conflicts Issue and Concluded There Were Substantial Conflicts.

The FDIC-OIG and the RTC-OIG investigated Rose from March 1994 to August 1995.[1072] Investigators reviewed several thousand documents, interviewed hundreds of people, and successfully litigated against the Rose Law Firm.[1073] The RTC-OIG invested 13,000 hours among twenty-one different agents.[1074] Attorneys and supervisory personnel also worked on the RTC-OIG investigation.[1075] Similarly, nineteen investigators worked on the FDIC-OIG investigation.[1076]

[1070] FDIC-OIG Report on Alleged Conflicts of Interest by Rose Law Firm, IO-94-096, Vol. 1 at 9 (July 28, 1995).

[1071] RTC-OIG Report, Investigation Concerning Rose Law Firm, Case No. WA-94-0016 at I-1 (Aug. 3, 1995).

[1072] Husok 2/4/98 GJ at 10.

[1073] See generally FDIC-OIG Report, Alleged Conflicts of Interest by the Rose Law Firm, Case No. IO-94-096 (July 28, 1995) and RTC-OIG Report, Investigation Concerning Rose Law Firm, Case No. WA-94-0016 (Aug. 3, 1995).

[1074] Husok 2/4/98 GJ at 10-11.

[1075] Id. at 10.

[1076] Id. at 11.

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a. February 17, 1995 Submission from Rose to the FDIC and RTC Inspectors General.

On February 17, 1995, Rose's attorney gave the FDIC-OIG and the RTC-OIG a lengthy analysis describing Rose's work for Madison Guaranty, the Frost case, Seth Ward, the Ward companies, and other alleged conflicts of interest.[1077] Rose claimed that another Little Rock law firm, Mitchell, Williams, Selig, Jackson & Tucker, was Madison Guaranty's lead counsel and that Rose did limited legal work for Madison Guaranty.[1078] Under a section entitled "Rose's Prior Representation of Madison Guaranty," Rose omitted any reference to the Ward-Madison-Rose connection.[1079] In a section entitled "Seth Ward, Seth Ward II, and P.O.M," Rose did not mention the firm's work on behalf of Seth Ward, Madison Guaranty, and Madison Financial. [1080] Rose's submission did not contain any reference to Rose's work for Seth Ward on the IDC/Castle Grande transactions.[1081]

b. Webster Hubbell's Statements to the FDIC-OIG and RTC-OIG.

Both the FDIC-OIG and RTC-OIG interviewed Hubbell after his December 1994 guilty plea. FDIC-OIG Senior Special Agents Karen Hepburn and Patrick McKenna interviewed Hubbell under oath with his attorney present all day on March 16, 1995.

[1077] See Submission of Rose Law Firm to the Inspector General of the Federal Deposit Insurance Corporation and the Inspector General of the Resolution Trust Corporation (Feb. 17, 1995).

[1078] See id. at 12.

[1079] See id. at 12-19.

[1080] See id. at 19-24.

[1081] See id.

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Hubbell claimed that he did not do any work on the IDC/Castle Grande matter.[1082] He denied purposely hiding from April Breslaw Rose's advocacy for Madison Guaranty before the Arkansas Securities Department ("ASD").[1083] He claimed he never represented Seth Ward in his dealings with Madison Guaranty.[1084] He said that he did not review the Borod & Huggins Report when Rose first obtained it.[1085] Hubbell admitted that he spoke with April Breslaw in September of 1993, telling "her that when he accepted the [Frost] case they discussed that Rose had done prior work for Madison and that his father-in-law was suing them. Breslaw told him that she did not recall him telling her those things and he responded that it was a brief conversation and he could see how she could have forgotten."[1086]

The FDIC-OIG investigators also asked Hubbell about the FDIC Legal Division review. Hubbell asserted that "he answered the Legal Division's questions to the best of his memory."[1087] According to Hubbell, the Legal Division "did not ask him any questions about any business relationship he may have had with Ward or about POM."[1088] Hubbell said he told Jack Smith and John Downing that he had told April Breslaw about Rose's prior "small amount of work" for Madison Guaranty and about his father-in-law's suit against Madison Guaranty the first time he

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[1082] Hubbell 3/16/95 FDIC-OIG Statement at 4-5.

[1083] Id. at 5.

[1084] Id. at 6, 8.

[1085] Id. at 7.

[1086] Id. at 10.

[1087] Id. at 11.

[1088] Id. As discussed in Chapter 1 of this Part, POM was a corporation owned by Ward for which Hubbell did legal work.

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and Breslaw spoke.[1089] Hubbell said that he "just recently learned that he was mistaken about telling Breslaw those facts during the first time they talked, but he believes he told her a few weeks later after he had completed his conflicts check."[1090]

On April 20, 1995, RTC-OIG agents interviewed Hubbell with his lawyer present. Hubbell said he did not see the Ward-Madison Guaranty dispute as connected to Rose's work for each of them as clients.[1091] Hubbell said he did not review the Borod & Huggins Report until it was "absolutely necessary for him to do so because of an issue involving a ROSE attorney, [Patricia Heritage, who] had worked at MADISON GUARANTY."[1092] Hubbell said he had no involvement in "preparing any of the agreements between [Seth] WARD and [Jim] MCDOUGAL."[1093] Hubbell disclaimed knowledge of or involvement in: (1) the September 23, 1985 draft agreement between Seth Ward and Jim McDougal; (2) the backdated September 24, 1985 agreement between Ward and Madison Financial, and (3) the December 11, 1986 letter from Ward to Madison Financial.[1094]

[1089] Hubbell 1/11/94 FDIC-OIG Int. at 1.

[1090] Hubbell 3/16/95 FDIC-OIG Statement at 10.

[1091] Hubbell 4/20/95 RTC-OIG Int. at 16.

[1092] Id. at 17.

[1093] Id. at 24.

[1094] Id.

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c. Federal Investigators Unwittingly Provided Incorrect Information to Congress Because They Were Unaware of the Work Mrs. Clinton Had Done for Madison Guaranty.

The FDIC-OIG issued its report on July 28, 1995. The RTC-OIG issued its report on August 3, 1995. Both reports found that Rose had concealed actual or potential conflicts of interest from the FDIC and RTC, especially in connection with the Frost case. On August 10, 1995, the House Committee on Banking and Financial Services held a hearing, taking testimony from members of FDIC and RTC OIGs.[1095] The witnesses generally testified about their reports and about Mrs. Clinton's work for Madison Guaranty.[1096] After Congressman Frank Lucas asked RTC-OIG attorney Patricia Black about Castle Grande and Seth Ward's role as a "straw purchaser," the questioning turned to Hillary Clinton's role in the Castle Grande transactions.[1097] Black testified that the RTC-OIG investigation found "no evidence that [Hillary Clinton] worked on Castle Grande."[1098] Then the following exchange:

> Mr. Vento: With regards to the Castle Grande issue and the role of Hillary Clinton, Hillary Clinton was a billing clerk. She was actually keeping track of the hours that were worked by the individual attorneys in the firm. Is that correct, Mr. Adair? Is that your understanding of her role? Ms. Black?

[1095] See House Banking Comm. Hearing, supra note 997, at 2 (Aug. 10, 1995) (indicating John Adair, Inspector General and Patricia Black, Counsel to the RTC and James Renick, Inspector General to the FDIC would be testifying).

[1096] House Banking Comm. Hearing, supra note 997, at 7-9, 12-13, 15, 22-23, 30, 34-35, 43-44 (Aug. 10, 1995) (testimony of P. Black); House Banking Comm. Hearing, supra note 997, at 8-9, 13, 15-17, 22-23, 25, 27, 35-39 (Aug. 10, 1995) (testimony of J. Renick); House Banking Comm. Hearing, supra note 997, at 9, 13, 16-18, 23, 33, 35-36 (Aug. 10, 1995) (testimony of J. Adair).

[1097] House Banking Comm. Hearing, supra note 997, at 12 (Aug. 10, 1995) (questioning by B. Vento).

[1098] Id. (testimony of Black).

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Ms. Black: She was the billing partner, sir. I'm not sure exactly what that entailed within the Rose Law Firm.

Mr. Vento: And so the fact is that she didn't necessarily work on the Castle Grande or any of the other direct investment issues that you examined, did she?

Ms. Black: We have no evidence that she worked on Castle Grande.

Mr. Vento: She didn't work on them; all she was doing was sending out the bills, is what my understanding is, and if I am wrong, we want to get to the bottom of this.

Ms. Black: She did work for Madison, sir. We don't know what it was. The bills that were submitted by Rose had the names of attorneys who did the work at the top, and then they had a block discussion of the activities that occurred, so we don't know who did what.[1099]

Another exchange between Congressman Frank Lucas and Ms. Black discussed Madison Guaranty v. Frost:

Mr. Lucas: But the people who helped do the transaction paperwork were now helping recover from the losses of the transaction paperwork?

Ms. Black: Yes, sir, that is correct.

Mr. Lucas: Thank you. If so, if the whole Frost suit went to trial, some very damaging information concerning Rose firm's complicity in insider fraud could be aired in public. In fact, if it could be proved that the Rose firm knowingly assisted Madison's fraudulent Castle Grande transaction, the Rose firm itself could be sued for the losses associated with the Castle Grande fiasco; isn't that right?

Ms. Black: That series of events could have occurred.

Mr. Lucas: Isn't this, in fact, what happened to many law firms that assisted in S&Ls that chose to have fraudulent schemes in the 1980's?

[1099] Id. (testimony of Black).

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Ms. Black: Where the RTC could prove that the firm was culpable, it did pursue such cases.

* * *

Mr. Lucas: And, in fact, Rose eventually did settle the case for $1 million, a pretty -- you call it a mere fraction of the original claim of $10 million; isn't that correct?

Ms. Black: That is the amount of the settlement, yes, sir.

Mr. Lucas: Now, regarding Mrs. Clinton's involvement in the Castle Grande project, aren't there memos that are appended to your report, both to and from Mrs. Clinton, relating to the proposed construction of a brewery on the Castle Grande property?

Ms. Black: Yes, there are. Those occurred subsequent to the closing of the initial purchase transaction.

Mr. Lucas: OK. And aren't there also memos from a Rose associate named Rick Donovan to Mrs. Clinton relating to sewer and water issues at the Castle Grande property?

Ms. Black: Yes, sir, and those also are subsequent to the initial purchase.[1100]

Later, the following exchange occurred:

Mr. Bentsen: [W]e have no evidence that [Hillary Clinton] was familiar with the inner workings of Madison. We have no evidence that Mrs. Clinton was involved in Castle Grande, nor do we have any evidence whatsoever that she prepared any representations regarding that; is that correct?

Ms. Black: I would agree with everything except that there are bills that have Mrs. Clinton's name on them. We do not know what those represent, and your statement as to any work with that may well be correct also. I just don't know.

Mr. Bentsen: But in fact, you all found no such information in your research?

[1100] Id. at 14-15 (testimony of Black).

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Ms. Black: Other than the bills, no sir.

* * *

Ms. Black: I understood your question on Mrs. Clinton and Castle Grande to deal with the initial purchase transaction, and my answer stands as to that. There was some involvement by Mrs. Clinton at a later time on the issue of the brewery and whether the township was wet or dry.

Mr. Bentsen: But not, if the Chair will indulge me a little bit, with respect to representations, because the discussion here today has not been as much to that as it has been to the structure of the transaction, and in the fact that Rose acted as the closing counsel, which is a broad term, which we're not sure what that means, but to whether or not they prepared any certificates or representations with respect to the structure of the transaction.

Ms. Black: That is correct. It was not representation on the initial acquisition but on subsequent issues.[1101]

Hubbell and Breslaw testified next. Hubbell stated the pre-Frost Rose-Madison Guaranty relationship did not constitute a conflict.[1102] Breslaw agreed.[1103] At the time, however, Breslaw did not know all the facts about Rose's prior work for Madison Guaranty, and she acknowledged that Hubbell had told her during Frost that "he was not representing Mr. Ward and that he would not do so in the future. He also told me that his relationship with his father-in-law was not a close one. I recall him saying that Mr. Ward was an ardent Republican and that he was an active Democrat."[1104]

[1101] Id. at 34-35 (testimony of Black).

[1102] Id. at 51, 58 (testimony of Hubbell).

[1103] Id. at 58 (testimony of Breslaw).

[1104] Id. at 46 (testimony of Breslaw).

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The true nature of the Rose-Madison Guaranty relationship was never fully revealed during the FDIC-OIG and RTC-OIG investigations. At the August 10, 1995 hearing, Hubbell claimed another law firm worked with the FDIC on matters related to Madison Guaranty and that people at Madison Guaranty knew all about the pre-Frost Rose-Madison relationship:

Mrs. Kelly: It was not a secret that [Hillary Clinton] had done work with the Madison case?

Hubbell: That is correct.

Mrs. Kelly: So most of you knew that?

Hubbell: We did know that. We didn't know necessarily what she did versus other lawyers on specific cases, but we knew that she was the billing partner within Madison.

Mrs. Kelly: Well, then, as I understand this, you say that you knew this, but you accepted the RTC as a client without disclosing this to the RTC. Is that correct?

Hubbell: I don't believe I have ever said that, Mrs. Kelly, but I do know that I do not consider it a conflict to have represented Madison and then to inherit a case that Madison itself had filed and then be asked by the RTC to take it over. It was a case that our client had filed, a different law firm, but the same client.

Mrs. Kelly: If you will forgive me, the picture I have in my mind is that -- I mean, if I were a member of a big powerful law firm and I had the opportunity to represent a client and in that be afforded the opportunity to protect one of my partners, and if I weren't concerned with the ethical implications of accepting that client, I have to admit it would tempt me. It would probably tempt all of us.

I can't think of a better way, really, to control access to information about my partner than to control the questions that were going to be asked and keep everything focused away from potentially embarrassing actions, and that that partner might have taken.

Hubbell: Mrs. Kelly, in response to that, our engagement was in connection with

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one lawsuit. Another law firm in Little Rock was representing the institution and the FDIC in a myriad of workouts and had access to the same information I did.

So we were only handling this one malpractice case. Another firm, as well as the Madison auditors, and everyone else was there.

In addition, I think one thing that people don't realize about Madison, and if you don't mind me saying this, normally when the FDIC or the RTC comes into an institution, most of the management was gone. Most of the management is gone.

In this case, only Mr. McDougal and Mr. Latham were gone. All of the people who did the day-to-day work were still in the institution. They knew everything about my father-in-law. They knew everything about the prior representation. They knew about every one of these loans. It was not your typical case, and I just say that to put this in context to the other work that we did.

When we take over -- when we help do the professional liability review of First Federal, for example, all of the management was gone... There wasn't anybody who knew what was going on.

In this case, the senior management of Madison was still working for the Federal Government, the FDIC.[1105]

[1105] Id. at 93-94 (testimony of Hubbell). Hubbell told a similar story to the Senate on Feb. 7, 1996: "Rightfully or wrongfully I assumed that they [the employees of the Madison Conservatorship] remembered better than I the transactions involving Castle Grande and IDC." Senate Whitewater Comm. Hearing, supra note 147, at 37 (Feb. 7, 1996) (testimony of W. Hubbell). Contrary to Hubbell's statement that, "[t]hey knew everything about the prior representation" others had left Madison Guaranty between July 1986 (when Rose ended its relationship with Madison Guaranty) and March 1989 (when Rose took over the Frost case). Notably absent from Madison Guaranty were Seth Ward and Seth Ward's long-time friend and Madison Guaranty colleague, Harry Don Denton. Denton 9/6/96 FDIC Int. at 5 (indicating Ward's employment was terminated on July, 1986). Denton was one of the few individuals who claimed to have direct knowledge about the involvement of Hillary Clinton and Webb Hubbell in the IDC and Castle Grande transactions. Denton 6/26/96 Int. at 5. The only Madison Guaranty employee still employed during the Frost litigation that might have known about Rose's 1985-86 work for Madison that this Office is aware of was Sue Strayhorn who worked at Madison

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During the August 10, 1995 hearing, when asked about Mrs. Clinton's work for Madison Guaranty, Hubbell said he "was not aware of the nature of the matters, but aware that the firm had represented Madison in 1985 and 1986 and aware that Mrs. Clinton was the billing attorney."[1106]

d. Rose's Response to the Investigative Reports.

The Rose Law Firm submitted responses to the OIG reports on September 12, 1995.[1107] Rose generally argued two points: 1) none of the actual or potential conflicts of interest identified by the OIG reports are actual conflicts of interest; and 2) Rose reasonably relied on Hubbell to disclose conflicts to the government.[1108] According to Rose, Hubbell alone was responsible for any failure to disclose conflicts.[1109]

As for Rose's work on IDC, Rose said that it "played an extremely limited role in connection with the IDC property," "so slight that neither John Latham, Madison Guaranty's president, nor Seth Ward, who supervised the transaction, recall Rose being involved in the transaction at all."[1110] Rose said it "did not represent Madison Guaranty -- or anyone else -- in

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Guaranty as a secretary. Strayhorn 4/7/94 RTC Affidavit at 1. There is no evidence that Strayhorn knew about the pre-Frost Rose work for Ward on the Castle Grande matter.

[1106] House Banking Comm. Hearing, supra note 997, at 49 (Aug. 10, 1995) (testimony of W. Hubbell).

[1107] Rose Law Firm's Responses to the Reports of the Inspector General (Sept. 12, 1995).

[1108] Id. at 1-2.

[1109] Id.

[1110] Id. at 49.

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connection with the sales of the property, including sales of Castle Grande."[1111] Rose asserted, also inaccurately, that none of the matters Rose "handled" on the IDC or Castle Grande transactions became an issue in Frost.[1112]

OIG attorney Patricia Black wrote the reply to Rose's response, which she submitted to the RTC-OIG on October 27, 1995. She concluded that "the Rose Response is replete with misstatements of fact and mischaracterizations of the OIG report. Accordingly, as a factual response, it warrants little, if any, regard."[1113]

e. Fall 1995 Senate Special Whitewater Committee Hearings.

On November 30, 1995, Breslaw testified at a public hearing before the Senate Banking Committee. Breslaw was asked about the 1986 FHLBB examination reports describing Seth Ward and Madison Guaranty as having engaged in fictitious sales. Ms. Breslaw testified that she knew nothing about Rose's involvement with the fictitious sales and that she believed Hubbell lied to her when she hired him.[1114]

Hubbell testified the next day. Hubbell repeated his claim that there was no conflict, that he disclosed his father-in-law's suit, common Frost-Rose clients, and Rose's prior work to April Breslaw, all during a short "30-second conversation."[1115] The prior work he said he disclosed

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[1111] Id. at 50.

[1112] Id. at 51.

[1113] OIG Reply to Rose Law Firm's Resp. to the Investigation Concerning the Rose Law Firm at 1 (Oct. 27, 1995).

[1114] Senate Whitewater Comm. Hearing, supra note 147, at 129 (Nov. 30, 1995) (testimony of A. Breslaw).

[1115] Senate Whitewater Comm. Hearing, supra note 147, at 98-102 (Dec. 1, 1995)

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involved "minor lending work," which referred to "closing loans."[1116] Hubbell testified that he learned of Rose's prior ASD work during the Frost case. He also testified that he considered whether Rose's ASD work might constitute a conflict of interest, but concluded there was no conflict and had no memory of telling Breslaw about the matter.[1117] Hubbell claimed that he, Gary Speed, and Rick Donovan took "certain steps" to keep Hubbell from "having certain knowledge" about "those reports" regarding Seth Ward.[1118] Hubbell said that he "would not look at that [Borod & Huggins] report for a period of time."[1119] The Frost billing records and Hubbell's fingerprints on the Borod & Huggins report show otherwise.[1120]

Also at the December 1, 1995 Senate Banking Committee hearing, Hubbell responded to April Breslaw's assertions made the previous day, that Hubbell lied to her. "I would apologize if I did lie to her," Hubbell said, "but I don't believe I did."[1121] Hubbell admitted that he spoke by telephone with Rick Donovan and April Breslaw on or about September 29, 1993.[1122] He said Breslaw told him "she had no recollection that I had told her about the prior representation of the

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(testimony of W. Hubbell).

[1116] Id. at 101 (testimony of Hubbell).

[1117] Id. at 115.

[1118] Id. at 116-118.

[1119] Id. at 117.

[1120] Federal Bureau of Investigation Laboratory Report (Nov. 21, 1997); Rose Law Firm Billing Records (Mar. 7, 1990) (Doc. No. 264-000264); Rose Law Firm Billing Records (Mar. 14, 1991) (Doc. No. 264-00020682).

[1121] Senate Whitewater Comm. Hearing, supra note 147, at 138 (Dec. 1, 1995) (testimony of W. Hubbell).

[1122] Senate Whitewater Comm. Hearing, supra note 147, at 163 (Feb. 7, 1996) (testimony of W. Hubbell).

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firm of Madison, and she wanted to raise that with me."[1123] Hubbell said he told Breslaw that he recalled telling her in 1989 about Rose's pre-Frost work for Madison Guaranty in a "very brief, less-than-30-second conversation."[1124] Hubbell said that although he was not initially concerned about any conflict of interest investigation, "[o]bviously, it grew."[1125]

f. Pillsbury Madison & Sutro Reports.

On February 4, 1994, the RTC issued an Order of Investigation to examine Rose, Madison Guaranty, and Frost.[1126] The RTC retained the law firm of Pillsbury, Madison & Sutro to investigate whether the RTC could bring civil claims against anyone formerly associated with Madison Guaranty.

On December 28, 1995, Pillsbury issued "A Report on the Rose Law Firm's Conduct of Accounting Malpractice Litigation Pertaining To Madison Guaranty Savings & Loan."[1127] Pillsbury determined that Rose's "representation of the RTC in the Frost case was adverse to the interests of Ward."[1128] Pillsbury also concluded:

> [w]hile, in different circumstances, it could have been appropriate to screen Hubbell from any participation in the Frost case overall, because of his relationships with Ward, it is unthinkable to keep the lead attorney in a contested litigation in the dark concerning issues material to the case, particularly without

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[1123] Id. at 164.

[1124] Id.

[1125] Id. at 166.

[1126] Pillsbury Madison & Sutro LLP, General Report on the Investigation of Madison Guaranty Savings & Loan and Related Entities: Prepared for Resolution Trust Corporation 1 (December 28, 1995)

[1127] Id.

[1128] Id. at 9.

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informing the client.[1129]

Despite this, Pillsbury concluded that although "a claim could be asserted that the Rose Law Firm had an impermissible conflict of interest in the Frost case, which it did not adequately disclose or waive . . . litigation would be difficult, the outcome would be uncertain and the expected recovery would not cover the costs of litigation."[1130] Pillsbury recommended that the RTC not sue Rose.

3. Billing Records Were Discovered in the White House, and for the First Time, Federal Investigators Learned the Extent of Mrs. Clinton's Work for Madison Guaranty.

The RTC ceased to exist on December 31, 1995, and the FDIC and RTC merged on January 1, 1996.[1131] On Friday, January 5, 1996, Mrs. Clinton's lawyer, David Kendall produced the Rose Law Firm's Madison Guaranty billing records.[1132] The FDIC-OIG reopened the RTC-OIG investigation in light of the recently produced billing records.[1133] On September 20, 1996,

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[1129] Id. at 10-11.

[1130] Id. at 19, 21.

[1131] Husok 2/4/98 GJ at 6.

[1132] See Letter from David E. Kendall, attorney for the Clinton's, to John D. Bates, Associate Independent Counsel, at 1 (Jan. 5, 1996); see also Rose Law Firm Billing Records (1985-1986) (Doc. Nos. DEK 014936 through 5049).

[1133] FDIC-OIG, Supplemental Report on Rose Law Firm Conflicts of Interest, WA-94-0016 (Sept. 20, 1996); see also FDIC-OIG Supp. Rep. on Rose Law Firm Conflicts of Interest at 1(Sept. 20, 1996) ("Because the discovery of Rose Law Firm billing materials provided significant new and highly relevant information which was unavailable to the RTC OIG during the course of its investigation, we elected to reopen the original case"). Additionally, Pillsbury issued a supplemental report on February 25, 1996. That report concluded that while the evidence did not exonerate anyone, there was no reasonable basis for filing a claim related to IDC/Castle Grande against the Rose Law Firm. Pillsbury Madison & Sutro LLP, A Supplemental Report on the Representation of Madison Guaranty Savings & Loan by the Rose

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the FDIC-OIG issued a Supplemental Report on Rose Law Firm Conflicts of Interest. That report concluded:

> [E]ntries in the billing materials and other evidence suggest that former Rose Law Firm partners Hillary Rodham Clinton and Webster L. Hubbell performed work that appears to have facilitated the payment of substantial commissions to Ward, who acted as a straw buyer for Madison Financial in the IDC transaction . . . . The method of payment of the commissions evaded regulations designed to protect the safety and soundness of the institution, and violated the integrity of its books and records. Further, Madison Guaranty used a document drafted by Clinton to deceive federal bank examiners as to the true nature of the payments to Ward.[1134]

FDIC-OIG senior counsel Fred Gibson Jr. explained the impact of the billing records on the investigation:

> [T]he Rose Law Firm's billing records . . . shed a tremendous amount of light on a relationship that up until then we had not known much about. It opened up significant new avenues of inquiry for us . . . . So there was significant information that we developed as a direct consequence of these records that was new to us despite the first investigation.[1135]

FDIC-OIG counsel Patricia Black realized based on the billing records and the 1996 FDIC-OIG investigation, that her August 10, 1995 House Banking Committee testimony had been wrong. She testified about this realization before the grand jury:

> Q. And did you have occasion to be involved in issuing a report on August 3rd,

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Law Firm: Prepared for Federal Deposit Insurance Corporation 164 (Feb. 25, 1996).

[1134] FDIC-OIG, Supplemental Report on Rose Law Firm Conflicts of Interest, WA-94-0016 at ii-iii (Sept. 20, 1996); see also id. at 1 ("Because the discovery of Rose Law Firm billing materials provided significant new and highly relevant information which was unavailable to the RTC OIG during the course of its investigation, we elected to reopen the original case").

[1135] Gibson 2/19/98 GJ at 117. Gibson and FDIC-OIG counsel Patricia M. Black worked on 1994-1995 RTC-OIG investigation, the August 3, 1995 RTC-OIG Report, the reopened 1996 FDIC-OIG investigation, and the September 20, 1996 FDIC-OIG Supplemental Report. Gibson 2/19/98 GJ at 3-4; Black 2/19/98 GJ at 3-4, 7-8.

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1995?

A. I did.

Q. And did your report reveal certain facts about the Rose Law Firm and its disclosure or nondisclosure of actual and potential conflicts of interest?

A. Yes, that was -- report was the result of an exhaustive investigation that had taken place over several months. And we put together a number of facts about those conflicts of interest.

Q. Now, did you testify in front of the House of Representatives of the United States Congress about your report after you issued your report?

A. Yes, I did.

Q. Would that be your testimony on or about August 10, 1995?

A. That is correct.

Q. Now, during your testimony before the House of Representatives, were you asked questions about the Rose Law Firm's actual and/or potential conflicts of interest?

A. We were.

Q. Were you asked questions about what your investigation uncovered about the Rose Law Firm's involvement in a series of transactions that's come to be known as Castle Grande?

A. Several questions, yes, sir.

Q. And after this 16 month investigation, what did you know about the Rose Law Firm's involvement in the series of transactions that has come to be known as the Castle Grande transactions, also known as the IDC transactions?

A. Not nearly as much as we found out later. In the summer of '95, we had in our possession four, I think, invoices indicating that work had been done by the Rose Law Firm for Madison Guaranty. One of those invoices reflected the initial September -- I'm sorry -- the initial October -- the closing in October -- purchase of the overall IDC property. Another of the invoices indicated involvement in a couple of minor aspects of that transaction.

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Q. All right. Now, you were under oath when you testified on August 10, 1995, before the House of Representatives, weren't you?

A. Yes, sir.

Q. And you gave truthful testimony as you understood the facts at that time, correct?

A. Absolutely, as I understood the facts at that time.

Q. Now, Ms. Black, in January of 1996, the Rose Law Firm/Madison Guaranty billing records were discovered allegedly at the White House. Did you become aware of that fact?

A. Yes, I did.

Q. Did you have occasion to review the Rose Law Firm's/Madison Guaranty billing records after their discovery at the White House?

A. Yes, after their discovery, the Senate Whitewater committee. . . asked us to reopen our investigation in light of the discovery of this material evidence, which we did immediately.

Q. Did your review of the then recently discovered Rose Law Firm/Madison Guaranty billing records change your understanding of the Rose Law Firm's relationship with Madison Guaranty Savings & Loan?

A. Substantially. As I had testified in the House, I believed that that involvement was minor and brief. As evidenced by the billing records, it was neither. My testimony, in short, was wrong.

Q. Although truthful?

. . . .

A. It was truthful, and I believed it was correct at the time I gave it. It was correct to the best of my knowledge. After our review of the records and evidence which we found following leads that we derived from those records, I just found out I was flat out wrong in August.

Q. And did your reopened investigation reveal that Hillary Rodham Clinton was much more involved with Madison Guaranty than you previously thought?

A. Substantially. In our August report -- at the time of our August report, we knew

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> the regulators came to close -- came to criticize the subsequent land flips that were a part of the Castle Grande/IDC transaction. But we had absolutely no indication that the Rose Law Firm or Mrs. Clinton had any involvement in that subsequent series of land flips. The records and, as I said, evidence that we discovered following those records indicated to the contrary.[1136]

The Rose Madison Guaranty billing records revealed that Hillary Clinton performed much more work on Madison Guaranty than was previously known. The billing records revealed that Hillary Clinton billed Madison Guaranty for work on the IDC matter.[1137] Her billings on the IDC matter included billing entries for numerous conferences with Seth Ward during 1985 and 1986.[1138] Mrs. Clinton billed Madison Guaranty for drafting an option agreement on May 1, 1986.[1139] Federal examiners concluded that this option agreement misled them about Ward's sham loans to and from Madison Guaranty and Madison Financial.[1140]

The FDIC-OIG 1996 investigation found that Webb Hubbell worked with Ward on IDC and Castle Grande, and that Hubbell's secretary, Martha Patton, typed several of Ward's Madison Guaranty documents, including: 1) a September 23, 1985 draft of Ward's agreement with Madison Financial; 2) a backdated September 24, 1985 agreement between Ward and Madison Financial that Ward gave to Madison on July 14, 1986; and 3) a December 1986 quitclaim deed

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[1136] Black 2/19/98 GJ at 4-7 (emphasis added).

[1137] Rose Law Firm Billing Records (Feb. 12, 1992) (Doc. No. DEK014937).

[1138] Rose Law Firm Billing Records (Nov. 22, 1985) (Doc. No. DEK014991); Rose Law Firm Billing Records (Jan. 21, 1986) (Doc. Nos. DEK015009, DEK015012, DEK015014); Rose Law Firm Billing Records (Mar. 28, 1986) (Doc. No. DEK015022).

[1139] Rose Law Firm Billing Records (May 13, 1986) (Doc. No. DEK015032).

[1140] FDIC-OIG Supplemental Report on Rose Law Firm Conflicts of Interest (WA-94-0016) at ii-iii, 42-45 (Sept. 20, 1996).

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relinquishing Ward's remaining Castle Grande property (Holman Acres) to Madison Guaranty.[1141] Martha Patton testified that she never received typing directly from Seth Ward, but received work for Ward from Hubbell.[1142] Her testimony contradicted Hubbell's statements that Ward directly worked with Hubbell's secretary.[1143]

4. The FDIC-OIG and RTC-OIG Reports Led to Criminal Referrals to this Office of Hubbell and Others.

Both the FDIC-OIG and the RTC-OIG sent criminal referrals to the OIC. On July 10, 1995, the FDIC-OIG issued a criminal referral to the Office of the Independent Counsel ("OIC ") that alleged that Rose and Hubbell (and other members of the Rose Law Firm) might have committed numerous federal felonies.[1144] On September 25, 1995, the RTC-OIG issued a criminal referral to the OIC that alleged that Hubbell's 1991 certifications might have constituted false statements in violation of 18 U.S.C. § 1001.[1145]

[1141] FDIC-OIG Report, Alleged Conflicts of Interest by the Rose Law Firm, Case No. IO-94-096 at 4 (July 28, 1995); Quitclaim Deed signed by Seth Ward (Dec. 12, 1986) (Doc. Nos. SEN 33135 through 36).

[1142] Patton 3/17/98 GJ at 6-7.

[1143] Senate Whitewater Comm. Hearing, supra note 147, at 11 (Feb. 7, 1996) (testimony of W. Hubbell); Patton 3/17/98 GJ at 6-7, 13.

[1144] The alleged violations included 18 U.S.C. §§ 4 (misprision of a felony), 287 (false, fictitious or fraudulent claims), 657 (lending, credit and insurance institutions; embezzlement, willful misapplication of moneys), 1001 (false statements generally), 1007 (making or inviting reliance on false, forged, or counterfeit statements, documents, or things for the purpose of influencing the FDIC), 1341 (mail fraud), and 1343 (fraud by wire, radio, or television).

[1145] Letter from James A. Renick, Acting Inspector General, FDIC Office of Inspector General to Kenneth Starr, Independent Counsel (July 10, 1995); Letter from Clark W. Blight, RTC Assistant Inspector General for Investigation to Kenneth Starr, Independent Counsel (Sept. 25, 1995).

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On January 31, 1996, following the discovery of Mrs. Clinton's billing records, the FDIC-OIG sent the OIC a letter alleging that Hubbell may have violated federal criminal law on January 11, 1994, during his interview with FDIC Legal Division attorneys Jack Smith and John Downing. The FDIC-OIG alleged that Hubbell may have lied when he said he did not review the Borod & Huggins Report, where Frost billing records recorded that Hubbell reviewed the Borod & Huggins report on February 2, 1990, the day after April Breslaw forwarded the report to Rose, and again on February 8, 1991 and February 12, 1991.[1146]

To determine the merit of these allegations, the OIC conducted a thorough investigation of Hubbell's conduct in the Frost litigation and related matters that bore upon his knowledge and state of mind at the time of his interviews with the FDIC-OIG and RTC-OIG. The remainder of this Chapter summarizes the evidence uncovered by that investigation.

B. Events Outside of the Rose Firm -- the FBI Investigation of Madison Guaranty and Ward's Lawsuit against Madison Guaranty.

In order to determine whether Hubbell's statements to FDIC and RTC investigators were materially false, this Office reviewed the historical evidence relating to Rose and its representation of the FDIC and RTC in the suit against Frost. Two aspects of that evidence were deemed important -- both the activity of the Rose firm itself, and the public actions of others, relating to Madison Guaranty, of which Hubbell and others at the Rose firm were aware.

In this Section we summarize the evidence relating to events occurring outside of the Rose Law Firm -- events of which the Rose partners were aware but which did not bear directly

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[1146] Letter from Carolyn R. Ryals, Deputy Inspector General, FDIC to Robert J. Bittman,

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on actions at the Rose Firm. Principal among these are two highly public events that engaged the attention of the Rose partners and the public in Little Rock. An FBI criminal investigation of Madison Guaranty resulted in the 1989 indictment of Jim McDougal, in the 1990 guilty plea of Madison Guaranty President John Latham, and the eventual trial and acquittal of Jim McDougal. During roughly the same time period, Seth Ward was engaged in litigation against Madison Guaranty, first winning a judgment, then using the services of Webb Hubbell to attempt to collect on that judgment and, ultimately, settling the matter with the RTC by agreeing to relinquish the monies he had gotten.

1. Investigations of Misconduct at Madison Guaranty -- FHLBB, Borod & Huggins, and the FBI.

a. The FHLBB Issued Madison Guaranty a Cease and Desist Order, and Filed a Critical Report of Examination.

On August 15, 1986, the FHLBB issued Madison Guaranty an Order To Cease And Desist.[1147] The FHLBB's Order restricted Madison Guaranty from engaging in real estate deals like Castle Grande.[1148] Additionally, the FHLBB's Order required that Madison Guaranty "not . . .

Associate Independent Counsel (Jan. 31, 1996).

[1147] Id.

[1148] FHLBB Order to Cease and Desist at 3 (Aug. 15, 1986) (Doc. No. NE-00000545). For example, the FHLBB's Order stated in part: "Madison Guaranty shall not engage in any transactions (including making loans or otherwise extending credit and exclusive of receipt or transfers of payments on existing loans), directly or indirectly, with any of the following persons or entities or their affiliates, without the prior written approval of the Supervisory Agent: Castle Sewer and Water Company, Castle Industries, Inc., the Wilson Co., Inc., . . . [and the] Industrial Development company of Little Rock[.]" Id. at 13 (Doc. No. NE-00000555); see also id. at 11 (Doc. No. NE-00000553) (With certain enumerated limited exceptions [in writing] and "[u]nless legally obligated to do so as of the effective date of this Order, Madison Guaranty shall

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release any borrower or guarantor from liability under any loan except where full payment of the loan, in cash, is obtained."[1149]

In the fall of 1986, the federal examiners completed their Madison Guaranty examination. On November 24, 1986, Examiner-In-Charge James Clark submitted a Report of Examination discussing the Castle Grande and other transactions.[1150] The report warned that Castle Grande was one of three real estate projects causing "losses" that "could render the Institution insolvent."[1151] The report added that "[i]f the profits were booked properly, the Institution would be, in fact, insolvent" and observed that "[i]n addition to [Madison Guaranty's] improper accounting entries, management blatantly disregarded numerous regulations."[1152] The Report said that Jim McDougal's control of Madison Guaranty "enabled him to divert substantial amounts of funds from the [large land development] projects to himself and others, who are considered to be

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not, without the prior written approval of the Supervisory Agent: (a) make, invest in, purchase or refinance (or commit to make, invest in, purchase or refinance), or otherwise modify any loans secured by real estate or any participation therein (including any acquisition, construction and development loans) or real estate investments, or any group of such loans, participations, or investments").

[1149] FHLBB Order to Cease and Desist at 13 (Aug. 15, 1986) (Doc. No. NE-00000555).

[1150] FHLBB Office of Examinations and Supervision, Report of Examination Madison Guaranty Savings and Loan Assoc., Docket No. 7601 at 2a (Nov. 24, 1986) (Doc. No. 99-00046750) ("These [large land] developments have been determined to be of questionable economic worth and significant losses are apparent. Of particular concern are the Campobello, Maple Creek and Castle Grande projects. If recognized, losses associated with these projects could render the Institution insolvent").

[1151] FHLBB Office of Examinations and Supervision, Report of Examination Madison Guaranty Savings and Loan Assoc., Docket No. 7601, at 2a (Nov. 24, 1986) (Doc. No. 99-00046750).

[1152] FHLBB Office of Examinations and Supervision, Report of Examination Madison Guaranty Savings and Loan Assoc., Docket No. 7601, at 2a (Mar. 4, 1986).

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insiders (relatives of Jim McDougal, employees, relatives of employees and friends)."[1153]

The report said the Castle Grande "land was purchased and sold in a series of fictitious transactions involving the McDougal-Henley Group members and Madison Financial. These sales were usually fully financed by Madison Guaranty, and down payments generally came from the proceeds of loans or fees paid by Madison Guaranty or its subsidiaries."[1154] The report identified Seth Ward's February 25, 1986 $70,000 loan and the remaining $300,600 balance of his $400,000 March 31, 1986 loan as among the "Mortgage Loans Considered Direct Investments."[1155] The report observed:

> The total current investment in this project exceeds its current economic value, in part, because of the inflated profits and payments to insiders. The classified investment includes the direct investment of Madison Financial and the commercial loans by Madison Guaranty to fully finance sales of land to McDougal-Henley Group members who apparently acted as straws. Since Madison Guaranty has apparently retained the risks of ownership on these loans, they are also considered direct investments.[1156]

FDIC-OIG Senior Counsel Fred Gibson later characterized the Castle Grande transaction as a "land flip," which he described as follows:

> A land flip is a transaction in which an individual or group will purchase property to resell it. Inherently, there's nothing wrong with reselling property. But in this particular case [of Seth Ward and Castle Grande], what you're doing is you're reselling it quickly at a series of inflated prices. In other words, you'll buy a piece of land for a million dollars and resell it shortly thereafter for $2 million whether that $2 million represents the value of the property or not. The transaction is typically financed 100% by the institution, the savings and loan, in the case of this

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[1153] Id.

[1154] Id. at 8.2.

[1155] Id.

[1156] Id. at 8.3.

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transaction, without regard to the underlying value of the property.

> The insiders of the institution typically participate in these transactions by taking commissions on the sale of the property or fees that are structured in some other way. So you'll have a whole series of sales of the property at increasing values. At each step along the way, people will be taking commissions or other forms of payments in the forms of fees to take money out of the transaction, but there's no underlying arm's-length transaction. The transaction is structured between these individuals, in essence, for the purpose of generating their own fees.[1157]

b. Borod & Huggins Investigated Misconduct at Madison Guaranty and Referred the Matter to the FBI which Opened a Criminal Investigation.

As described in Chapter 1 of this Part, on July 11, 1986, the FHLBB ordered the removal of the McDougals and Madison Guaranty President John Latham from control of Madison Guaranty. Madison Guaranty's board later hired the Memphis law firm of Borod & Huggins to investigate Madison Guaranty's prior activities and transactions, an action recommended by Madison Guaranty's General Counsel, John Selig of Mitchell, Williams, Selig, Jackson & Tucker.[1158] On December 1, 1986, Jeffrey C. Gerrish, a partner at Borod & Huggins, began the investigation.[1159]

Gerrish interviewed numerous witnesses and issued a report on March 3, 1987.[1160] That report discussed the McDougals' use of Madison Guaranty to benefit themselves and other

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[1157] Gibson 2/19/98 GJ at 11-12.

[1158] Borod & Huggins, Madison Guaranty Savings & Loan Association Special Counsel Investigative Report at 1 (Mar. 3, 1987) [hereinafter "Borod & Huggins Report"]. Gerrish & McCreary, the successor firm to Borod & Huggins, issued a supplemental report on August 31, 1988.

[1159] Id. at 1.

[1160] See id.

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insiders. It concluded, "[F]rom the time the McDougals acquired Madison Guaranty . . . they began to use it for their personal benefit and that of their friends. . . . [For the entire time of the McDougals' control,] the record is replete with various transactions to or for the benefit of the McDougals and their friends and relatives."[1161] The report noted:

> The most flagrant of these transactions involves the overall use of Madison Financial . . . and its development projects. In connection with these development projects, numerous tracts of land were sold or "flipped" at inflated values and subject to even greater inflated appraisals known to be false by the principals involved. Such sales of service corporation property generated substantial "paper profits" for the service corporation which, due to Jim McDougal's compensation system of 10 percent of net profits of the service corporation, directly enabled him to receive substantial compensation from the service corporation.
>
> In addition to general buying and selling of property to generate inflated "profits" at the service corporation, McDougal employed various friends and relatives, including his wife Susan and several individuals in his wife's family, including Jim, David, and Bill Henley and [Susan's sister,] Paula Sorenson. The compensation of most of these individuals was directly related to the development and sale of property by Madison Financial. Several of the individuals were on commission and the inflated sales prices for the property inflated those commissions as well. Other commissions would be paid when no real estate brokerage or sales services were performed. Other individuals provided marketing and public relation services or design services for the properties.
>
> In addition to taking care of their friends and relatives through development fees, commissions and work on properties owned by Madison Financial, Mr. and Mrs. McDougal, from the beginning, caused Madison Guaranty to extend credit to themselves and to their friends and relatives. As early as March 5, 1982, Jim and Susan McDougal began to personally borrow money from the Association. In addition, as early as December 4, 1982, Pat Harris, Jim Guy Tucker and later Freddie Whitener, R.D. Randolph and the Henley brothers began to borrow substantial sums from the Association.[1162]

[1161] Id. at 4.

[1162] Id. at 5-6.

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The Borod & Huggins Report charged that numerous persons -- including Seth Ward -- had committed "apparent criminal violations."[1163]

As a result of this report, on March 19, 1987, Madison Guaranty Secretary Sarah Hawkins sent criminal referrals to the U.S. Attorney's office and the FBI field office in Little Rock, attaching the Borod & Huggins Report.[1164] Hawkins sent the identical information to the FHLBB.[1165]

c. The FBI Investigated Madison Guaranty.

In April 1987, a meeting was held between FHLBB personnel, Special Agent Aaron, and Assistant United States Attorneys Ken Stoll and Sandra Cherry to discuss strategy.[1166] They decided to focus the investigation on the Castle Grande and Maple Creek Farms projects.[1167]

[1163] Id. at 12.

[1164] See Letter from Sarah Hawkins, Secretary, Madison Guaranty Board of Directors, to Federal Bureau of Investigation (Mar. 19, 1987). This was not the first information the FBI had received about Madison Guaranty. On January 9, 1987, a confidential source told Special Agent Gary Aaron of the FBI Little Rock field office there had been insider transactions and land flips at Madison Guaranty involving, among others, Jim McDougal and Jim Guy Tucker. FBI Memorandum from SA Gary A. Aaron to SAC (Jan. 16, 1987). Special Agent In-Charge Don Pettus notified the U.S. Attorney for the Eastern District of Arkansas, George Proctor, that the FBI had opened a case and that Jim Guy Tucker had received an insider loan from Madison Guaranty for the Castle Grande project. Letter from Don K. Pettus, Special Agent in Charge FBI Little Rock Field Office, to the Honorable George W. Proctor (Jan. 23, 1987); Letter from Don K. Pettus, Special Agent in charge FBI Little Rock Field Office, to the Honorable George W. Proctor at 5 (Feb. 25, 1987).

[1165] Letter from John H. Mitchell, Supervisory Agent, Federal Home Loan Bank of Dallas to Don K. Pettus, Special Agent in Charge, FBI Little Rock Field Office (Mar. 28, 1988).

[1166] FBI Memorandum from SA Gary A. Aaron to [Don Pettus], Special Agent in Charge (May 1, 1987).

[1167] Id.

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In May 1987, Worthen Bank -- majority controlled by Jack Stephens and Rose attorney C. Joseph Giroir -- was subpoenaed for documents by the federal grand jury.[1168] In July 1987, the grand jury subpoenaed Madison Guaranty, to produce various loan documents, including loan records relating to David Hale, Dean Paul, and Jim McDougal.[1169] In October 1987, Special Agent Aaron and Assistant United States Attorney Stoll narrowed the focus of the investigation, focusing on transactions involving appraiser Robert Palmer, David Hale, Dean Paul, and Madison employee Davis Fitzhugh.[1170] On October 20, 1987, Special Agent Aaron met with Madison Guaranty CEO Tommy Trantham and requested documents on loans to Palmer, Hale, Paul, and Fitzhugh.[1171] On October 23, 1987 Don Denton's secretary, Barbara Spears, produced records to the FBI.[1172]

The FBI investigation intensified in January 1988. On January 5, Special Agent Aaron tried to interview Robert Palmer,[1173] who was represented by David Wood of Wood & Hargis.[1174] One of Wood's partners was Bob Wilson Jr., the son of Bob Wilson Sr. -- Seth Ward's longtime

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[1168] Subpoena to Testify Before Grand Jury Issued to Custodian of the Records, Worthen Bank & Trust Co., Little Rock, Arkansas (E.D. Ark. May 29, 1987).

[1169] Subpoena to Sarah Hawkins, or Any Authorized Officer of Madison Guaranty Savings & Loan Association U.S.D.C. (E.D. Ark. July 2, 1987).

[1170] FBI Memorandum from SA Gary A. Aaron to [Don Pettus], Special Agent in Charge (Oct. 28, 1987).

[1171] Id.

[1172] See Inventory of Property Acquired as Evidence, FBI Field File No. 29A-2459 (Oct. 26, 1987) (recorded evidence acquired from Spears on Oct. 23, 1987).

[1173] Memorandum from SA Gary A. Aaron to [Don Pettus], Special Agent in Charge (Feb. 16, 1988).

[1174] Palmer 1/5/88 FBI Int. at 1.

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friend and a former Union Bank official.[1175] The FBI told Palmer he was being investigated because Madison Guaranty records showed that he had prepared fictitious and fraudulent appraisals for various loans. Wood said that Palmer was innocent of any wrongdoing concerning Madison Guaranty appraisals.[1176] Wood, however, asked for immunity in exchange for Palmer's cooperation.[1177]

Numerous banks were subpoenaed over the next few weeks, including Superior Federal, First National, and Twin City Bank.[1178] Twin City Bank had made allegations of bank fraud involving Hale and other investors -- including Mike Berg who was interviewed by the FBI -- in the River Front Warehouse project. One of Twin City's executives was Margaret (Davenport) Eldridge, who was also on the board of Arkansas Department of Financial Affairs and a good friend of Mrs. Clinton.[1179]

[1175] Wilson Sr.'s investment company (Wilson Co.) had loaned McDougal money for his Campobello project and Wilson had been retained as a consultant on that project. Wilson 10/4/94 Int. at 3-4; FHLBB Letter to Board of Directors, Madison Guaranty Savings and Loan at 3 (June 19, 1986) (Doc. No. 99-00038784) (Wilson Co., had been included on the list of restricted insider companies in the FHLBB's June 19, 1986 letter to Madison Guaranty's board of directors.); Wilson Senior, had also attended a July 15, 1986 meeting at the Rose Firm with Webb Hubbell and others to discuss the possibility of him succeeding McDougal at Madison Guaranty. Latham 8/20/96 GJ at 68-69.

[1176] Memo from SA Gary A. Aaron to [Don Pettus], Special Agent in Charge (Feb. 16, 1988).

[1177] Id.

[1178] Subpoena to Any Authorized Officer, Superior Federal Bank U.S.D.C. (E. D. Ark. Jan. 11, 1988); Subpoena to Any Authorized Officer, First National Bank, U.S.D.C. (E.D. Ark. Jan. 11, 1988); Subpoena to Any Authorized Officer, Twin City Bank U.S.D.C. (E.D. Ark. Jan. 11, 1988).

[1179] Senate Whitewater Comm. Hearing, supra note 147, at 140-41 (May 9, 1996) (testimony of M. Davenport).

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On January 19, 1988, Palmer's attorney notified Special Agent Aaron that his client was postponing any decision concerning a plea agreement until after he reviewed his Madison Guaranty work.[1180] On January 29, 1988, Palmer's attorney received a target letter from United States Attorney Charles Banks.[1181]

On March 4, 1988, Madison Guaranty Senior Vice President Sarah Hawkins sent the FHLBB a criminal referral related to Palmer Properties.[1182] This was forwarded to the U.S. Attorney's Office for the Eastern District of Arkansas and the FBI field office in Little Rock.[1183] In August 1988, Madison Guaranty's CEO, Tommy Trantham, was subpoenaed for documents relating to several persons, including Jim Guy Tucker.[1184]

d. Federal Investigations of Madison Guaranty Led to a Guilty Plea and Trial.

On August 18, 1988, agents and Assistant United States Attorneys Stoll and Cherry met to further plan a strategy for the investigation of Madison Guaranty.[1185] They decided to concentrate their efforts on falsification of Madison Guaranty records, with John Latham as the

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[1180] Memo from SA Gary A. Aaron to [Don Pettus], Special Agent in Charge (Feb. 16, 1988).

[1181] Letter from Charles A. Banks, United States Attorney, Eastern District of Arkansas, to David M. Hargis, Attorney at Law (Jan. 29, 1988).

[1182] Letter from Sarah Hawkins, Senior Vice President, Madison Guaranty, to Director of Examinations, FHLBB of Dallas (Mar. 4, 1988).

[1183] Letter from John H. Mitchell, FHLBB, to Don K. Pettus, Special Agent in Charge (Mar. 28, 1988).

[1184] Subpoena to Tommy Trantham U.S.D.C. (E.D. Ark. Aug. 18, 1988).

[1185] Memo from SA Gary A. Aaron to [Don Pettus], Special Agent in Charge at 1 (Sept. 8, 1988).

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potential target; David Hale's loans with Madison Guaranty, which were believed -- correctly as it turned out -- to have been obtained with false information; the 1308 Main Street land flip involving Jim Guy Tucker; and the Castle Grande development, including Davis Fitzhugh's purchase of the Levi Strauss building, Jim Guy Tucker's purchase of 34 acres, and the acquisition of the utility by Castle Sewer and Water transactions involving Tucker and R.D. Randolph; and the specific roles of Palmer, Hale, and Dean Paul.[1186]

Various individuals were interviewed over the next several months including Madison Guaranty CFO Greg Young, Jim and Bill Henley, Susan McDougal, Don Denton, Dean Paul, Jim McDougal, John Latham, John Selig, and David Hale.[1187] Latham was interviewed again in October 1989.[1188] On February 16, 1990, John Latham pleaded guilty to falsifying the records of Madison Guaranty on February 28, 1986 in violation of 18 U.S.C. § 1006, by switching Davis Fitzhugh's October 1985 nonrecourse note for a recourse note.[1189] The note had been signed for the loan Fitzhugh had received to purchase the Levi-Strauss building located in the Castle Grande development. Latham admitted that he instructed another employee to switch the notes to deceive the regulators.[1190]

[1186] Id. at 1-3.

[1187] See Young 3/1/89 FBI Int.; J. Henley 6/26/89 FBI Int.; B. Henley 6/12/89 FBI Int.; S. McDougal 7/17/89 FBI Int.; Denton 7/26/89 FBI Int.; Paul 8/1/89 FBI Int.; J. McDougal 8/9/89 FBI Int.; Latham 8/30/89 FBI Int.; Selig 9/8/89 FBI Int.; Hale 10/10/89 FBI Int.

[1188] See Latham 10/11 & 11/14/89 FBI Int.

[1189] Tr. at 5-11, United States v. Latham, No. LR-CR-89-29 (E.D. Ark. Feb 16, 1990) (Doc. Nos. 341-00002832 through 50).

[1190] Id. at 5-6, Judge George Howard Jr. sentenced Latham to 36 months imprisonment, suspended 30 months of that sentence in favor of probation, and permitted the remaining 6

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On November 20, 1989, a Little Rock grand jury indicted Jim McDougal, Jim Henley, and David Henley on charges related to the IDC/Castle Grande transactions.[1191] The charges and progress of the case were reported prominently in the Little Rock daily newspapers.[1192] The indictment focused on two transactions, "In one transaction, a Madison Guaranty salesman purchased land for $525,000 and was paid a $50,000 commission for arranging the sale to himself. In the other, the Henleys and another developer had borrowed from Madison Guaranty the entire $472,000 purchase price for a parcel."[1193]

About three weeks before the criminal trial, Sam Heuer, Jim McDougal's attorney, sent Webb Hubbell a letter warning that Seth Ward "might have some type of criminal exposure under these broad bank fraud violations that the U.S. Attorney's Office seems so happy to use these days."[1194] Heuer said he was "in a pretty tight situation on this McDougal case," and that "Seth Ward, who I understand to be your father-in-law, appears to be a pretty critical witness in

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months to be served in a half-way house. Id. at 16-17.

[1191] See Indictment, United States v. McDougal, et al., No. LR-CR-89-161 (E.D. Ark. Nov. 20, 1989).

[1192] See, e.g., Larry Ault, Ex-Madison Owner Faces Fraud Counts, Ark. Democrat, Nov. 21, 1989, at D1; George Wells, Ex-Congressional Nominee Indicted, Ark. Gazette, Nov. 21, 1989, at B1; George Wells, Ex-banker: No Assets; Court Names Attorney for Fraud Charge Defense, Ark. Gazette, Dec. 1, 1989, at B1; Claude R. Marx, Ex-Head of S&L Pleads Innocent, Ark. Democrat, Dec. 2, 1989, at B2; Larry Ault, S&L Ex-Owner Faces Pretrial Mental Exam, Ark. Democrat, Dec. 22, 1989, at D3; George Wells, McDougal's Life: Highs and Lows, Ark. Gazette, Jan. 14, 1990, at A1.

[1193] See Indictment, United States v. McDougal, et al., No. LR-CR-89-161 (E.D. Ark. Nov. 20, 1989).

[1194] Letter from Sam T. Heuer, attorney for Jim McDougal, to Webster L. Hubbell (May 7, 1990) (Doc. No. 212-00011968).

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this case."[1195] Heuer asked to interview Ward.[1196] Hubbell did not respond.[1197]

The McDougal/Henley trial began on May 29, 1990. None of the defendants were convicted. McDougal and his attorney alleged that the prosecution was a political witch-hunt and a sham.[1198]

The McDougal trial was well publicized in the Little Rock newspapers.[1199] It also appears

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[1195] Id.

[1196] Id. Hubbell's co-counsel in Frost, Rick Donovan, learned of Heuer's May 7, 1990 letter to Hubbell about Seth Ward's possible criminal exposure on January 6, 1998 when Donovan testified before the Little Rock grand jury. Donovan 1/6/98 GJ at 100 ("This is the first I've ever heard of anything like that").

[1197] Heuer 4/1/97 GJ at 96 ("The letter went out. Hubbell never got back to me. If I called, he didn't call me back. So we just went on to trial"). But see id. at 97 ("After [McDougal's 1990 criminal trial] was over, I talked to him. But prior to that, he may have -- he may have called me back after I wrote the letter to ask what I -- where I could see potential criminal exposure and me explaining it to him and him communicating that he did not want me to talk to his father-in-law. That may very well have happened. I don't remember").

[1198] See Cary Bradburn, McDougal Case Termed 'Witch Hunt,' Ark. Gazette, June 7. 1990, at 7B, available at 1990 WL 7512712 (noting McDougal's attorney characterized case as "witch hunt" in closing arguments); George Wells, Pair Acquitted of Bank Fraud, Ark. Gazette, June 8, 1990, at 1A, available at 1990 WL 7512832 ("'This was a political show trial that would do Joe Stalin proud,' McDougal said after the verdicts were read").

[1199] See, e.g., George Wells, Thrift Industry Woes Complicate Jury Choice, Ark. Gazette, May 30, 1990, at B1; Larry Ault, Jury Seated in Fraud Case Against Former Banker, Ark. Democrat, May 30, 1990, at D1; Larry Ault, Jury Told of Banker's Alleged Cash Shifting, Ark. Democrat, May 31, 1990, at C1; Joe Nabbefeld, $525,000 Madison Loan 'Sham,' Lawyer Testifies, Ark. Democrat, June 1, 1990, at D1; Joe Nabbefeld, Laborer Testifies He Signed Papers That Hid S&L Deal, Ark. Democrat, June 2, 1990, at D1; Joe Nabbefeld, Judge Dismisses Defendant in Bank Fraud Case, Ark. Democrat, June 5, 1990, at D1; Cary Bradburn, Henley's Memory Clearer than McDougal's, Ark. Gazette, June 6, 1990, at B6; Joe Nabbefeld, McDougal Portrays Self as Naive Victim, Ark. Democrat, June 6, 1990, at D2; Joe Nabbefeld, McDougal Real Victim Lawyer Says; Attorney Decries S&L 'Which Hunt', Ark. Democrat, June 7, 1990, at D1; George Wells, Pair Acquitted of Bank Fraud; Defendant Declares it was a 'Sham Trial', Ark. Gazette, June 8, 1990, at A9; Joe Nabbefeld, Jury Finds McDougal, Henley Innocent in S&L Fraud Case, Ark. Democrat, June 8, 1990, at A1.

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that both Governor and Mrs. Clinton kept up with the trial proceedings. Sam Heuer, the attorney who represented Jim McDougal at this trial, lived in the neighborhood near the Governor's Mansion.[1200] According to Heuer, he and Governor Clinton had talked on an occasion or two about Heuer's representation of McDougal, with Governor Clinton expressing a friendship with McDougal.[1201] During the trial, according to Heuer, Governor Clinton stopped by Heuer's house and chatted about the trial.[1202] Governor Clinton asked where they were in the trial, and Heuer advised him that they were about to do closing arguments.

> And [Clinton] was giving me his ideas about closing. You know, he said, "Well, gosh you can say that Jim McDougal is a man that's helped thousands of people and helped the economy of our --" you know, in just President Clinton's rambling way, I guess it would be described.[1203]

Later, Heuer told McDougal in a joking manner, "Well, the President wrote your closing argument for you."[1204]

According to Heuer, immediately after the acquittal, Governor Clinton called Heuer to congratulate him; he was also looking for Jim to congratulate him when he called.[1205] McDougal said that after his acquittal he did indeed receive a telephone call from Governor

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[1200] Heuer 4/1/97 GJ at 15.

[1201] Id. at 13.

[1202] Id. at 14.

[1203] Id. at 13-14.

[1204] Id. at 14. Later in his Mar. 11, 1992 interview with campaign officials Jim Blair and Loretta Lynch, McDougal repeated that the Governor had helped write his closing argument in the trial. Jim Blair's handwritten notes (Mar. 11, 1992) (Doc. No.264-000206960).

[1205] Heuer 4/1/97 at 19-20.

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Clinton congratulating him.[1206] According to McDougal, Governor Clinton told him that they -- the Clintons -- had spent some money on Whitewater and that he wanted McDougal to send them some money, which McDougal remembered as $3,000.[1207]

After the acquittal, Jim McDougal requested Heuer's assistance in trying to resolve matters relating to Whitewater Development.[1208] On July 3, 1990, Heuer wrote a letter to Hillary Clinton. In this letter he made reference to conversations he had had with both Governor Clinton and Jim McDougal about Whitewater.[1209]

According to Heuer, Hillary Clinton called him back and invited him to lunch.[1210] Heuer believed his lunch with Mrs. Clinton was about a month after McDougal's acquittal.[1211] At this lunch meeting, according to Heuer, the two things discussed were Jim McDougal's trial and Whitewater.[1212] According to Heuer, Mrs. Clinton did not give him much information about

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[1206] J. McDougal 4/3/97 GJ at 46.

[1207] J. McDougal 4/3/97 GJ at 46-47. According to Heuer, McDougal told him about this conversation with the President much later. Heuer 4/1/97 GJ at 20.

[1208] Heuer 4/1/97 GJ at 22-23.

[1209] Id. at 24. According to Heuer, he probably said something to Governor Clinton when he saw him along the lines, "Hey, we need to get this Whitewater thing resolved." And according to Heuer, Governor Clinton said, "Well you need to talk to Hillary about that," Heuer adding that his impression was that, "She handled all of that kind of business of and all of that kind of stuff." Id.

[1210] Id. at 26.

[1211] Id. at 101. On June 17, 1990, several lengthy articles analyzing the McDougal trial appeared in the Little Rock papers. Joe Nabbefeld, Madison: S&L Crisis in Microcosm, Ark. Democrat, June 17, 1990, at G1; Joe Nabbefeld, Castle Grande 'Bargain' Took Root 20 Years Ago, Ark. Democrat, June 17, 1990, at G1; Joe Nabbelfeld, Madison Case Near-Blueprint for Bankrupt S&L, Ark. Democrat, June 17, 1990, at G5.

[1212] Heuer 4/1/97 GJ at 29, 101-102.

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Whitewater,[1213] and it was Heuer's impression that Mrs. Clinton was not interested in letting go of the Whitewater corporation although she did not indicate why.[1214] According to Heuer, Mrs. Clinton was knowledgeable about Jim McDougal's criminal trial as it was well publicized at the time.[1215] According to Heuer, they discussed the trial in a general sense.[1216]

The Rose Law Firm litigation section attorneys handling the Madison v. Frost case, had closely monitored the criminal trial of Jim McDougal, billing the government for their attendance at the trial.[1217] Rose attorney Rick Donovan recalled that the Washington lawyer with the FDIC told them, "[m]ake sure you go to McDougal's trial and report back to me accordingly."[1218]

e. Later Criminal Investigations.

Two years later, in September 1992, the RTC sent a new criminal referral naming Jim McDougal and Madison Guaranty to the United States Attorney and the FBI's Little Rock field office. On July 20, 1993, based on a criminal referral from the Small Business Administration ("SBA"), the FBI obtained a search warrant for the office of David Hale's Capital Management Services.[1219] Hale and two other attorneys were indicted by a federal grand jury in Little Rock on

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[1213] Id. at 29.

[1214] Id. at 26.

[1215] Id. 102.

[1216] Id.

[1217] Donovan 1/6/98 GJ at 84-86. Rose Law Firm billing memo on FDIC, Madison Guaranty v. Frost (Jun. 20, 1990) (Doc. No. 105-00083613) (LR GJ Exh. No. 1629).

[1218] Donovan 1/6/98 GJ at 85-86.

[1219] Irons 5/21/96 GJ at 67, 72.

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September 23, 1993.[1220] On the day of his indictment, Hale made public allegations against former associates, including McDougal, the Clintons, and then-Governor Jim Guy Tucker, concerning the misuse of Capital Management funds.[1221]

On September 27, 1993, the RTC's Kansas City office forwarded nine more criminal referrals about Madison Guaranty and Jim McDougal to its Washington office. On October 8, 1993, these referrals were sent to the U.S. Attorney and FBI in Little Rock.

On November 3, 1993, the new U.S. Attorney for the Eastern District of Arkansas recused herself and her entire office from the Hale prosecution, the RTC's Madison Guaranty referrals, and other Madison-related matters. Donald Mackay, a career prosecutor with the Fraud Section of the Department of Justice's Criminal Division, took over Hale's prosecution and the RTC criminal referrals involving Madison Guaranty.

On January 12, 1994, President Clinton requested the appointment of a special counsel to investigate the Whitewater-Madison Guaranty controversy.[1222] The Justice Department investigation was turned over to regulatory Independent Counsel Fiske on January 20, 1994. He was later replaced by statutory Independent Counsel Starr.

[1220] Indictment, United States v. Hale et al., No. LR-CR-93-147 (E.D. Ark. Sep. 23, 1993).

[1221] James B. Stewart, Blood Sport 326 (1996).

[1222] See John King, Clinton to Request Special Counsel for Whitewater, Chi. Sun Times, Jan. 12, 1994, at 3.

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2. Ward and Madison Guaranty.

a. Initial Attempts by Madison to Collect from Ward.

Madison Guaranty's outside counsel and investigators at Borod & Huggins learned in December 1986 that Seth Ward had made no payments on the remaining $300,000 debt from his March 31, 1986 loan or his $70,000 debt from June 1986. Ward faced no personal liability because the June 1986 amendments made the loans nonrecourse, secured by the Holman Acres property. In lieu of making any payments, Ward simply deeded Holman Acres back to Madison Guaranty.[1223] The legal paperwork necessary to accomplish this was prepared with some assistance by Webb Hubbell.[1224] In 1992, the RTC sold Holman Acres for $38,000.[1225]

By the end of 1986, Madison Guaranty had loaned or paid Ward a total of $474,000:

1) $300,000 from the March 31, 1986 loan;

[1223] Borod & Huggins Report, supra note 1158, App. at 111, 127.

[1224] Letter from Seth Ward, Madison Guaranty employee, to H. Don Denton, Senior Vice President (Dec. 11, 1986) (Doc. No. 396-00000551). See Quitclaim Deed (Dec. 12, 1986) (Doc. Nos. 396-00000552 through 53); Patton 3/17/98 GJ at 9-14. Hubbell explained: "I remember that Seth would ask me -- that he said he got a computer notice of -- saying that he owed the note, and that it was a nonrecourse note. I remember him asking me how -- how you pay it back, how do you pay back a nonrecourse note, and I believe that ultimately I told him how you do it, which is send the deed back." Hubbell 8/22/96 GJ at 42. Hubbell also added, "[I] do recall telling him how to do it. . . . I'm trying to say, I was involved. To the extent I was involved, I don't know." Id. at 43. In 1996, Mrs. Clinton was shown the December 11, 1986 letter from Ward to Denton and stated that she did not recall Hubbell working on that aspect of Ward's dealing with Madison Guaranty. H. Clinton 2/14/96 FDIC Int. at 96-97.

[1225] Sale Agreement Commercial Property, Seller: RTC, Buyer: The Dorothy Ensminger Trust (May 12, 1992) (Doc. Nos. MGSL-FR-00000050 through 53). In 1988, during the trial of Ward v. Madison Guaranty, an appraiser testified that lot 27 and 28 of Holman Acres was worth $170,000. Tr. at 299, Ward v. Madison Guaranty, No. 87-7580 (E.D. Ark. Aug. 31, 1988) (testimony of Michael Pyron) (Doc. No. NE-00000311).

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2) $1,000 from the May 1, 1986 option;

3) $70,000 from Ward's June 1986 loan;

4) $93,000 from Ward's June 1986 loan;

5) $10,000 from a payment Ward received in June 1986.

Also, Ward had in his possession the unfunded $300,000 April 7, 1986 cross note listing Ward as lender and Madison Financial as borrower, and the backdated September 24, 1985 agreement, which gave Ward $35,000 for an option on Holman Acres. As explained below, Ward subsequently sued Madison Guaranty over the unfunded $300,000 April 7, 1986 note and the backdated September 24, 1985 agreement.

For its part, Madison Guaranty had title to Holman Acres and the unfunded $70,943.47 April 7, 1986 note. As explained above, Ward returned the unfunded $70,943.47 April 7, 1986 note in June in exchange for the conversion of his loans to nonrecourse loans.

Deeding Holman Acres to Madison Guaranty for the cross loans did not end Madison Guaranty's attempts to collect from Ward. Ward still had the June 1986 $93,000 loan outstanding. When Madison Guaranty tried to collect, Ward hired the law firm of Wright, Lindsey & Jennings to explore possible civil claims against Madison Guaranty for the "commissions" Ward claimed he was owed, commissions Ward had not asserted a right to until Madison Guaranty said it was going to collect on the $93,000 loan.[1226]

[1226] Madison's Interrog. Resp. No. 13 at 10, Ward v. Madison Guaranty, No. 87-7580 (E.D. Ark. Mar. 1, 1988) (Doc. No. NE-00000061). See Memo in Support of the FSLIC's Motion for Reconsideration or, Alternatively, to Stay Remand of This Action Pending Appeal, Ward v. FDIC, No. 89-180 (E.D. Ark. May 12, 1989) (Doc. No. NE-00000582) ("The suit by the

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b. Ward Sued Madison.

On September 2, 1987, Ward filed suit, alleging that Madison Guaranty and Madison Financial owed him "not less than $381,236.06" based on a September 3, 1985 memorandum between Ward and McDougal, the backdated September 24, 1985 agreement, and the $300,000 April 7, 1986 unfunded cross note.[1227] The complaint stated that Ward's unpaid $93,000 June 1986 loan should be a "set-off against the defendants' indebtedness to him."[1228] On June 2, 1988, Madison Guaranty counterclaimed against Ward for repayment and interest on the $93,000 June 1986 loan,[1229] as well as excess commissions Madison Guaranty asserted should not have been paid to Ward.[1230]

Plaintiff Seth Ward in this action was apparently instituted in response to Madison Guaranty's attempt to collect $93,000 that Ward had borrowed").

[1227] Complaint, Ward v. Madison Guaranty, No. 87-7580 (E.D. Ark. Sept. 2, 1987) (Doc. Nos. NE-00000012 through 15); Memo from Jim McDougal to Seth Ward (Sept. 3, 1985) (Doc. No. NE-00000016); Letter and Addendum from Seth Ward to James B. McDougal (Sept. 24, 1985) (Doc. Nos. NE-00000017 through 19); Loan Agreement between Seth Ward and Madison Financial Corporation (Apr. 7, 1986) (Doc. No. NE-00000020). On September 3, 1987, the Arkansas Democrat ran a small article entitled Commission Member Sues S&L over Debt (Doc. No. 396-00001148). The article explained that Seth Ward, a member of the Little Rock Airport Commission, had filed a lawsuit against Madison Guaranty Savings and Loan seeking to recover more than $400,000 in real estate commissions. Mrs. Clinton, who was the attorney for the Little Rock Airport Commission, learned "at some point" that Ward was suing Madison Guaranty "for what he said were commissions." H. Clinton 4/25/98 Depo. at 102.

[1228] Complaint at 3, Ward v. Madison Guaranty, No. 87-7580 (E.D. Ark. Sept. 2, 1987) (Doc. No. NE-00000014).

[1229] Counterclaim at 1-2, Ward v. Madison Guaranty, No. 87-7580 (E.D. Ark. June 2, 1988) (Doc. Nos. NE-00000067 through 68).

[1230] Id. at 2.

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Ward v. Madison Guaranty was tried before a jury on August 30-31, 1988.[1231] Ward prevailed, and the trial court entered a judgment in Ward's favor of $468,306.25, offset by the $93,000 plus interest Ward owed Madison Guaranty, for a total judgment of $353,502.57.[1232]

[1231] The key individuals involved in the IDC transaction and later development of the parcel as Castle Grande testified at trial. The sworn testimony of the former Madison Guaranty personnel was at odds with what Madison Guaranty told federal examiners about Ward's option and cross loans in 1986. In both his deposition and trial testimony, John Latham said the $400,000 March 31, 1986 loan from Madison Guaranty to Ward was to pay him commissions Madison Financial owed on the IDC transactions. Latham testified that the unfunded April 7, 1986 note showing a loan from Ward to Madison Financial was prepared because Ward wanted documentation of MFC's obligation to him for $300,000. See Tr. at 222, Ward v. Madison Guaranty, No. 87-7580 (E.D. Ark. Aug. 30, 1988) (Doc. No. 341-00004133) (testimony of John Latham). Latham said the option was drafted because Seth Ward was holding Holman Acres as security for the payment of his commissions. Latham said the parties did not intend for Ward to receive both the $300,000 commission payment and title to Holman Acres. When the option was exercised, the unfunded April 7, 1986 Madison Financial note was supposed to be destroyed. See Latham 6/8/88 Depo. at 23-24; Tr. at 100, Ward v. Madison Guaranty, No. 87-7580 (E.D. Ark. Aug. 30, 1988) (Doc. No. NE-00000234-235) (testimony of John Latham). During later grand jury testimony, Latham reaffirmed his Ward v. Madison Guaranty testimony. Latham 8/20/96 GJ at 24-25. Don Denton's deposition similarly confirmed prior memoranda he had written supporting Ward's claim that the cross loans were related to paying Ward's commissions, a proposition Denton had denied to federal examiners in 1986. See Memo from Don Denton, Chief Lending Officer, to John Latham, Chief Executive Officer and Chairman of Madison Guaranty (July 1, 1986) (Doc. No. 34-00004839); Memo from Don Denton, Chief Lending Officer, to John Latham, Chief Executive Officer and Chairman of Madison Guaranty (July 14, 1986) (Doc. No. 34-00004837). Only Seth Ward's testimony was at all consistent with the explanations that had been given to the examiners. Ward testified that the $400,000 loan he received from Madison on March 31, 1986 was for "personal needs" and did not represent a payment of his commissions. Ward 5/19/88 Depo. at 34, Ward v. Madison Guaranty, No. 87-7580 (E.D. Ark.) He also testified that the option agreement was not related to his commission -- Jim McDougal simply wanted the property so Ward sold him an option. Ward 5/19/88 Depo. at 35-40, Ward v. Madison Guaranty, No. 87-7580 (E.D. Ark.)

[1232] Judgment, Ward v. Madison Guaranty, No. 87-7580 (E.D. Ark. Sept. 6, 1988) (Doc. Nos. NE-00000084 through 85).

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c. Ward Attempted to Collect His Judgment.

After the trial court entered judgment, Ward sought to collect by filing writs of garnishment against his own relatives and business, seeking an order directing them to pay him money they otherwise owed Madison Guaranty.[1233] Webster Hubbell represented the garnishees, that is, his and Seth Ward's relatives and associates.[1234] The garnishment actions became unnecessary when Madison Guaranty deposited $400,000 with an escrow agent as security for the judgment during its appeal of Ward's judgment.[1235]

Hubbell later said that he had not disclosed his involvement in the Ward v. Madison Guaranty case from the FDIC and the RTC, because "it was insignificant."[1236] Hubbell also said that he considered the writs of garnishment to be very minor and not a conflict.[1237]

[1233] Writ of Garnishment, Allegations and Interrogatories and Certificate of Service, Ward v. Madison Guaranty, No. 87-7580 (E.D. Ark. Sept. 21, 1988) (Doc. Nos. NE-00000102 through 05 and NE-00000109 through 13).

[1234] Answers to Allegations and Interrogatories, Ward v. Madison Guaranty, No. 87-7580 (E.D. Ark. Sept. 27, 1988) (Doc. Nos. NE-00000117 through 20); Order, Ward v. Madison Guaranty, No. 87-7580 (E.D. Ark. Nov. 16, 1988) (Doc. Nos. NE-00000129 through 30) (signed on behalf of garnishees by Webb Hubbell).

[1235] Supersedes Order And Escrow Agreement, Ward v. Madison Guaranty, No. 87-7580 (E.D. Ark. Nov. 15, 1988) (Doc. Nos. NE-00000125 through 28); Plaintiff's Reply to Defendant's Response in Opposition to Motion to Remand at 1, Ward v. FDIC, No. 89-180 (E.D. Ark. Apr. 19, 1989) (Doc. No. NE-00000522).

[1236] Hubbell 3/16/95 FDIC-OIG Int. at 7.

[1237] Hubbell 4/20/95 RTC-OIG/OIC Int. at 23-24. Additionally, Skeeter Ward filed a lawsuit against Madison Guaranty in December 1988. The dispute concerned the interest rate on a loan Skeeter Ward then had with Madison Guaranty. The district court granted summary judgment in Madison Guaranty's favor in January 1990. FDIC-OIG Report, Alleged Conflicts of Interest by the Rose Law Firm, Case No. IO-94-096 at 33 (July 28, 1995).

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d. The FDIC Unsuccessfully Tried to Remove the Ward v. Madison Guaranty Case to Federal Court.

After the FDIC took responsibility for Madison Guaranty in February 1989, the FDIC was substituted as the party defendant in the action. On March 10, 1989, while the appeal of Ward's state verdict was pending, FDIC attorneys filed to remove Ward v. FDIC to federal district court in Little Rock.[1238] The firm of Friday, Eldredge and Clark replaced Mitchell, Williams, Selig, Jackson & Tucker in representing the FDIC/Madison Guaranty in this suit. Ward's attorneys opposed removal, and asked the federal court to remand the case back to the state court.[1239]

Also in March, Ward hired attorney Thomas Ray because Ward's previous trial lawyer, Alston Jennings, had a conflict of interest.[1240] Ray affirmed that he still called "Jennings and/or Hubbell when something [he] considered significant had occurred concerning the court proceedings."[1241] Ray also confirmed that he "provided copies of most significant briefs or other papers [he] filed to Jennings and Hubbell."[1242]

[1238] Notice of Removal, Ward v. FDIC, No. 89-180, (E.D. Ark. Mar. 10, 1989) (Doc. Nos. NE-00000002 through 04). See Federal District Court Docket Sheets, Ward v. FDIC, No. 89-180 (E.D. Ark. June 24, 1989) (Doc. Nos. NE-00000787 through 92). According to Ward's attorney, March 10, 1989, was also the same day that the trial court's court reporter completed the trial court transcript and record. Plaintiff's Reply to Defendant's Response in Opposition to Motion to Motion to Remand, Ward v. FDIC, No. 89-180 (E.D. Ark. Apr. 19, 1989) (Doc. No. NE-00000523).

[1239] Motion To Remand and Plaintiff's Memorandum Of Law In Support Of Motion To Remand, Ward v. FDIC, No. 89-180 (E.D. Ark. Mar. 22, 1989) (Doc. Nos. NE-00000413 through 60).

[1240] Ray 4/28/94 RTC-OIG Aff. at 1-2.

[1241] Id. at 6.

[1242] Id. Ray "did so as a matter of courtesy to keep them informed and not for the purpose of seeking substantive input or advice from either Jennings or Hubbell regarding my

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The FDIC's response to Ward's request for remand asserted "Ward's entire case" against Madison Guaranty and Madison Financial "depended upon . . . undisclosed and disputed agreements and records."[1243] Of the September 24, 1985 agreement, the FDIC charged:

> [A]fter litigation began, for the first time, [Ward] produced what he claimed was bestowed upon him by his cohort, Jim McDougal, president of Madison Financial, and a copy of the original [September 24, 1985] agreement marked "Void." Ward admitted the new agreement was backdated so that it bore a false date. The case was replete with such other alleged mysterious, backdated or "restructured" agreements not appearing in the official records of Madison.[1244]

The FDIC added that excerpts from the "400 pages of testimony and exhibits" from the state trial court record revealed a "general idea of the heavy 'odor' of the conduct of the institution, in violation of federal law, diverting illegal profits to the officers, directors, employees and stockholders at the expense of the federally insured depositors."[1245]

On April 28, 1989, the federal district court ordered Ward v. FDIC remanded to the state court.[1246] The case returned to the Arkansas Court of Appeals.[1247] On June 13, 1989, the FDIC

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representation of Ward." Id. Ray "wanted to keep Hubbell informed of significant developments in the case so that he could be of possible assistance in passing along information to Ward, who was seriously injured in the summer of 1989; underwent major surgery; and, then suffered a stroke." Id. at 7. According to Ray, once Ray began representing Ward, Hubbell "stayed completely clear of the legal issues involved with Ward." Id.

[1243] Response of Federal Deposit Insurance Corporation, Conservator for Madison Guaranty Savings and Loan Association, in Opposition to Motion to Remand and Brief in Support at 4, Ward v. FDIC, No. 89-180 (E.D. Ark. Apr. 12, 1989) (Doc. No. NE-00000469).

[1244] Id. at 5 (Doc. No. NE-00000470).

[1245] Id. at 11 (Doc. No. NE-00000476).

[1246] Order, Ward v. FDIC, No. 89-180 (E.D. Ark. Apr. 28, 1989) (Doc. No. NE-00000578); Ray 4/28/94 RTC-OIG Aff. at 3.

[1247] Ray 4/28/94 RTC-OIG Aff. at 3.

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appealed to the United States Court of Appeals for the Eighth Circuit the federal district court's decision to remand.[1248]

e. The Statute Creating the Resolution Trust Corporation Altered the Outcome of the Federal Ward v. FDIC Appeal.

The United States Court of Appeals for the Eighth Circuit initially ruled it did not have jurisdiction to review the district court's decision to remand the case to the state court -- a victory for Ward.[1249] However, on August 9, 1989, the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 ("FIRREA") became law.[1250] As a result, the RTC succeeded FSLIC as Madison Guaranty's conservators, and replaced the FDIC as Madison Guaranty's managing agent.[1251] The RTC therefore replaced the FDIC as the party defendant in Ward's suit.

On October 20, 1989, the Eighth Circuit reversed its earlier decision and ruled that the FIRREA provided it with jurisdiction to review the district court's decision to remand Ward's suit to the state court.[1252]

[1248] See Notice of Appeal, Ward v. FDIC, No. 89-180 (E.D. Ark. June 13, 1989) (Doc. Nos. NE-00000690 through 91).

[1249] In re: Fed. Sav. and Loan Ins. Corp., 881 F.2d 564, 565-66 (8th Cir.), reh'g granted and vacated, 888 F.2d 57 (8th Cir. 1989), on reh'g sub nom., Ward v. RTC., 901 F.2d 694 (8th Cir. 1990).

[1250] Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. No. 101-73, 103 Stat. 183 (1989); In re: Resolution Trust Corp., 888 F.2d 57, 58 (8th Cir. 1989), on reh'g sub nom., Ward v. RTC., 901 F.2d 695 (8th Cir. 1990).

[1251] Financial Institutions Reform, Recovery, and Enforcement Act of 1989, Pub. L. No. 101-73, § 501. Motion For Substitution Of Parties, RTC v. Frost, No. 89-216 (E.D. Ark. Feb 1, 1991) (Doc. Nos. CT-00000834 through 35). When Madison Guaranty later entered receivership on November 30, 1990, the RTC became Madison Guaranty's receiver.

[1252] In re: Resolution Trust Corp., 888 F.2d 57 (8th Cir. 1989), on reh'g sub nom., Ward v. RTC., 901 F.2d 694-695 (8th Cir. 1990).

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Meanwhile, the state appeal of Ward's suit remained pending in the Court of Appeals of Arkansas, until that court dismissed the appeal because the RTC failed to file a brief on time.[1253] The case returned to the state trial court in Little Rock, and the RTC again sought to remove it to federal district court.[1254] This time, Ward did not challenge the removal.[1255] The RTC (as successor to Madison Guaranty) and Madison Financial asked the district court to vacate the state court judgment.[1256] The district court declined and entered judgment for Ward.[1257] The Eighth Circuit reversed the district court.[1258] The Eighth Circuit held that the RTC and Madison Financial could assert defenses previously unavailable when the case was tried before the state trial court, including that "Ward's claim for real estate sales commissions is based on an unrecorded side agreement [the backdated September 24, 1985 agreement] barred by [federal law]. These defenses were available to the RTC as receiver, but were not available to Madison Guaranty or Madison Financial during the state trial."[1259]

Ward unsuccessfully sought review of the Eighth Circuit's decision in the Supreme Court of the United States.[1260] Ward and the RTC settled the case on April 30, 1993, and Ward agreed

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[1253] RTC v. Ward, No. CA 89-124, 1989 WL 126294 (Ct. App. Ark. Oct. 25, 1989); Ray 4/28/94 RTC-OIG Aff. at 3-4.

[1254] Ward v. RTC., 901 F.2d 694 (8th Cir. 1990).

[1255] Id.

[1256] Ward v. RTC., 972 F.2d 196, 197-98 (8th Cir. 1992).

[1257] Id. at 198.

[1258] Id. at 199.

[1259] Id.

[1260] Ward v. RTC., 507 U.S. 971 (1993).

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to pay the RTC $325,000.[1261]

C. Activity at the Rose Law Firm -- The FSLIC/Giroir Conflict, Mrs. Clinton's Madison Billing Records, and the Representation of Madison in the Suit against Frost & Company.

This Section now turns its attention to activity at the Rose Law Firm. While the FBI investigation and the Ward lawsuit were proceeding, the Rose firm was involved in a conflict of interest dispute with the FSLIC. That dispute resulted in a judgment against the Rose firm of $3 million, of which the partners were personally responsible for $500,000. And, at roughly the same time, Mrs. Clinton had her Madison Guaranty records destroyed. Notwithstanding the cautionary events relating to the FSLIC conflict over FirstSouth, Hubbell sought appointment as the FDIC's counsel representing Madison Guaranty against Frost while concealing much of Rose's prior connection to Madison Guaranty.

1. The Rose Firm and the FSLIC.

a. Rose Law Firm Solicited Work on the FirstSouth Matter, but Was Disqualified by a Conflict of Interest.

In the fall of 1986, the FHLBB prepared for the failure of Arkansas savings and loan institution FirstSouth, which Webb Hubbell described as "the largest savings and loan in Arkansas."[1262] The FHLBB negotiated with various law firms for work on the FirstSouth receivership, including Rose. On Wednesday, November 5, 1986, Vince Foster circulated a

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[1261] Ray 4/28/94 RTC-OIG Aff. at 2-3; Ward 2/12/96 Senate Whitewater Comm. Depo. at 119. Ward stated (apparently mistakenly) that he "paid them $330,000" to settle Ward v. Madison Guaranty, but the settlement agreement states that the amount was $325,000. Id.

[1262] Attachment to Attorney's Liability Assurance Society, Ltd., Claim Form at 5 (Feb. 9, 1987) (Doc. No. 2625-00001113).

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memorandum to all attorneys at Rose discussing FirstSouth and the significance of checking for conflicts of interest.[1263] Rose received a conflicts list from the FHLBB/FSLIC, and the firm held a meeting at which "everyone was asked whether they had any conflicts with the list."[1264] Rose members raised senior Rose member Joe Giroir's involvement with FirstSouth.[1265] In 1985 and 1986 Giroir had acted as both borrower and lawyer on a series of transactions causing substantial losses to FirstSouth.[1266]

Foster prepared a response for the FSLIC, informing it only that Giroir had loans with FirstSouth, and proposing to screen Giroir from FirstSouth matters.[1267] On Friday, November 7, 1986, Rose members Foster and Herbert Rule proposed Rose as the FSLIC's counsel on FirstSouth.[1268] The FHLBB, however, learned that Giroir's FirstSouth involvement was substantial, and therefore a disqualifying conflict of interest for Rose.[1269]

In a November 24, 1986 memorandum, Vince Foster informed Rose's members about his recent efforts to obtain FSLIC business:

Since the policy of avoiding potential conflicts was implemented last spring,

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[1263] Memo from Vincent Foster Jr., Rose Law Firm attorney, to All [Rose Law Firm] Attorneys (Nov. 5, 1986) (Doc. No. 281-00024992).

[1264] Hubbell 4/20/95 RTC-OIG/OIC Int. at 11.

[1265] See Rule 3/3/98 GJ at 51-52.

[1266] See id.

[1267] Hubbell 3/16/95 FDIC-OIG Int. at 12.

[1268] Fax transmittal sheet and letter from Vincent Foster Jr., Rose Law Firm attorney, and Herbert C. Rule III, Rose Law Firm attorney, to John Beaty, Trial Attorney, FHLBB (Nov. 7, 1986) (Doc. Nos. 281-0029941 through 46).

[1269] Memo from Vincent Foster, Rose Law Firm attorney, to All [Rose Law Firm] Members (Nov. 24, 1986) (Doc. Nos. 264-00022318 through 22).

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> various lawyers, primarily litigators, have turned down or resigned from a significant amount of representation (see attached memo of David Williams), but I am also aware of at least three transgressions of the policy. I recommend we either reconfirm or rescind the policy. If we conclude to continue to avoid conflicts, then there has to be 100% participation.[1270]

On December 4, 1986, FirstSouth was declared insolvent, and the FHLBB appointed FSLIC receiver.[1271] The FHLBB believed there was a viable legal malpractice claim against Rose based on Joe Giroir's involvement with FirstSouth.[1272] Rose considered whether it should resign from all future FSLIC work.[1273]

b. FSLIC's Action against the Rose Firm.

In early February of 1987, Hubbell met with FHLBB Deputy General Counsel Jack D. Smith to discuss whether Giroir should leave Rose.[1274] Hubbell and Foster met with three FSLIC attorneys in Washington on February 9.[1275] The FSLIC told them it was investigating a malpractice claim against Rose because of opinion letters Rose issued about Giroir and FirstSouth. Hubbell later wrote:

[1270] Id.

[1271] See Settlement Agreement and Release at 4 (Jan. 28, 1988) (Doc. Nos. 281-00003202 through 17).

[1272] Smith 2/5/98 GJ at 16. "And we had talked at that time to members of the Rose Law Firm about what they were going to do about it," then FHLBB attorney Jack Smith remembered later. "And we were going to sue them for recovery." Id.

[1273] Memo from Webb Hubbell, Rose Law Firm attorney, to All [Rose Law] Firm Members (Jan. 20, 1987) (Doc. No. 319-00034691).

[1274] Memo from Vincent Foster Jr., Rose Law Firm attorney, to Bill Kennedy, Rose Law Firm attorney, and Webb Hubbell, Rose Law Firm attorney (Apr. 10, 1987) (Doc. Nos. 281-00024965 through 68); Hubbell 3/16/95 FDIC-OIG Int. at 12.

[1275] Attachment to Attorney's Liability Assurance Society, Ltd., Claim Form at 3-4 (Feb.

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> Vince and I were summoned to Washington to be lectured by FSLIC officials . . . . They then outlined what they termed "a most serious claim" against our firm . . . . Vince, after circulating a conflicts memo, had certified to FSLIC that the Rose firm had never represented FirstSouth. Now we learned we had. And the representation was on a major deal involving one of our partner. . . .
>
> It was unlikely that we were going to get any more FSLIC business, they said, and they were appalled at our bidding for the FirstSouth business in light of this situation. But they accepted Vince's explanation (lame as it seemed) that none of our partners had told us about the conflicts.
>
> Finally, they made it absolutely clear that if they had to sue us, they would.[1276]

The next day, Hubbell sent letters to Rose's three malpractice carriers, advising them of the potential claim and describing Giroir's interactions with FirstSouth.[1277] He observed that if FSLIC sued Rose, "one [of] our members [Giroir] [would be] in litigation with a client [FSLIC] on a business matter at the same time we are representing that client."[1278]

On March 18, FHLBB attorney John Beaty wrote a memorandum to FHLBB Associate General Counsel Dorothy L. Nichols and Jack Smith recommending that Rose should be fired as counsel for either FHLBB or FSLIC because of the conflict problems.[1279] Foster met with Jack

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9, 1987) (Doc. Nos. 2625-00001112 through 13).

[1276] Webb Hubbell, Friends in High Places 130-31 (1997).

[1277] Letters from Webster L. Hubbell, Rose Law Firm attorney, to Simpson, Thatcher & Bartlett; Shand Morahan & Company, Inc., malpractice insurance company; and Professional Managers Incorporated, malpractice insurance company (Feb. 10, 1987) (Doc. Nos. 2625-00001114 through 35).

[1278] Letter from Webster L. Hubbell, Rose Law Firm attorney, to Shand Morahan & Company, Inc., malpractice insurance company at 4 (Feb. 10, 1987) (Doc. No. 2625-00001128).

[1279] Memo from John B. Beaty, Trial Attorney, FHLBB, to Dorothy L. Nichols, Associate General Counsel, and Jack D. Smith, Deputy Counsel at 1 (Mar. 18, 1987) (Doc. No. 281-00003274).

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Smith, John Beaty, and others in Washington on April 9, 1987,[1280] which Foster described in a memorandum to Hubbell and Rose member William Kennedy.[1281] At the meeting, Smith stressed that the FSLIC's "number one rule on fee counsel was that there could be no litigation between FSLIC and another party represented by fee counsel."[1282] Jack Smith told Webb Hubbell that Rose would be disqualified from FSLIC if the FirstSouth conflict was not resolved.[1283]

Hubbell wrote that at this point he, Foster, and Mrs. Clinton began meeting in her office about the problem "almost daily":

> Hillary was angry, too. She had participated in several of Vince's phone calls to the FSLIC assuring them that we had no conflict. She felt betrayed. She also worried that a $10 million claim would finally put the oldest law firm west of the Mississippi out of business. Years later, she would tell me that the years 1987-88 were the two hardest years of her life.[1284]

Rose and the FSLIC continued negotiating, but on July 16, 1987, the FSLIC's outside counsel advised Rose that:

> The actions (and omissions) of the Rose Law Firm give rise to civil claims against the firm for breach of fiduciary and professional responsibilities as well as for aiding and abetting the breach by certain FirstSouth officers of their fiduciary duties. Accordingly, demand [for $8 million] is hereby made upon the Rose Law Firm for satisfaction of these claims.[1285]

[1280] Rose Law Firm Billing Records (May 27, 1987) (Doc. No. 264-00017613).

[1281] Memo from Vincent Foster Jr., Rose Law Firm attorney, to Bill Kennedy, Rose Law Firm attorney, and Webb Hubbell, Rose Law Firm attorney (Apr. 10, 1987) (Doc. Nos. 281-00024965 through 68).

[1282] Id. at 3 (Doc. No. 281-00024967).

[1283] Smith 2/5/98 GJ at 17; Smith 1/12/98 Int. at 1.

[1284] Hubbell, Friends in High Places 132 (1997).

[1285] Letter from F. Thomas Hecht, Partner, Hopkins & Sutter, to Managing Partner, The

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Hubbell said that Foster and other Rose attorneys "had brought in more than a million dollars in fees from FSLIC [and they] were trying to salvage that relationship," while Hubbell had "spearheaded the settlement of the claim."[1286] On August 20, attorneys for Rose met with FSLIC officials, described by FHLBB attorney John Beaty:

> [T]he Rose Law Firm's counsel suggested that they would be willing to recommend to their client a payment of $500,000. We responded that an additional zero would be more appropriate. Further discussion persuaded the Rose Law Firm's counsel by the close of the meeting to raise their recommendation to $2 million, with some of the money purportedly coming from the firm's insurers and some from the Rose Law Firm itself.[1287]

After months of negotiations, on January 28, 1988, FSLIC and Rose agreed that Rose would pay FSLIC $3 million, $500,000 of which was paid directly by Rose's partners.[1288] Hubbell signed the settlement agreement.[1289]

On November 10, 1994, when asked about FirstSouth, Hillary Clinton told the FDIC-OIG "there were issues involving C. Joseph Giroir, a former Rose partner, but [she] was unaware of what those issues may have been. She stated she had no involvement with the FSLIC and any

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Rose Law Firm at 2-3 (July 16, 1987) (Doc. Nos. 2625-00000965 through 66).

[1286] Hubbell, Friends in High Places 133 (1997).

[1287] Memo from John B. Beaty, Trial Attorney, FHLBB, to Jordan Luke, General Counsel and Brian Neuberger, Acting Director or SLIC at 8 (Sept. 22, 1987) (Doc. No. 281-00018778).

[1288] Letter from Thomas Ray, Partner, Shults, Ray & Kurrus, to John Beaty, Trial Attorney, FHLBB (Jan. 28, 1988) (Doc. No. 281-00018334); Settlement Agreement and Release between FSLIC Corporate and Rose Law Firm (Jan. 28, 1988) (Doc. Nos. 281-00018782 through 97); Hubbell 1/28/88 Aff. (Doc. Nos. 281-00018798 through 99); Escrow Agreement between FSLIC and Rose Law Firm (Jan. 28, 1988) (Doc. Nos. 281-00018800 through 05); Smith 2/5/98 GJ at 16.

[1289] Smith 2/5/98 GJ at 17.

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negotiations involving FirstSouth or Mr. Giroir."[1290]

c. Vince Foster Tried to Get FSLIC to Hire Rose as Fee Counsel.

In October and November 1988, Vince Foster tried to get the FSLIC to hire Rose as fee counsel for six Arkansas savings and loan institutions about to enter conservatorship or receivership.[1291] One of those institutions was Madison Guaranty. On October 17, 1988, Thomas Hindes of the FHLBB's Office of General Counsel asked whether Rose would like to submit a proposal to work as FSLIC's fee counsel, which Foster did four days later.[1292]

On October 31, Foster received the conflicts checklists for the six Arkansas institutions.[1293] The conflicts list for Madison Guaranty referred to Jim and Susan McDougal, Frost partner James Alford, and Castle Grande.[1294] It listed those law firms and lawyers that

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[1290] H. Clinton 11/10/94 FDIC-OIG Int. at 5. Additionally, Hubbell testified in 1996 that he "may have taken" his FirstSouth files from Rose when he left Rose and came to Washington in January 1993. Senate Whitewater Comm. Hearing, supra note 147, at 158 (Feb. 7, 1996) (testimony of W. Hubbell).

[1291] Conservatorship occurs when a failed savings and loan institution operates under the control of the appropriate federal regulatory body (the FSLIC, FDIC, or RTC). In receivership, the federal regulatory body will close the failed institution and sell off its assets to minimize losses. See, e.g., Thomas 2/19/98 GJ at 15-17.

[1292] See Letter from Vincent Foster Jr., Rose Law Firm attorney, to James Lantelme, FSLIC attorney at 1 (Nov. 8, 1988) (Doc. No. RIC113874); Letter from Vincent Foster Jr., Rose Law Firm attorney, to Tom Hin[d]es, Litigation Division, Office of General Counsel, FHLBB (Oct. 21, 1988).

[1293] See Letter from Vincent Foster Jr., Rose Law Firm attorney, to Tom Hin[d]es, Litigation Division, Office of General Counsel, FHLBB (Nov. 1, 1988) (Doc. No. RIC113961).

[1294] Memo from Vincent Foster Jr., Rose Law Firm attorney, to All Attorneys with Conflicts Checklist as attachment (Nov. 1, 1988).

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FSLIC knew had performed legal work for Madison Guaranty.[1295] The conflicts list did not mention Rose.[1296]

The next day, Foster circulated a memorandum to all Rose attorneys attaching the conflicts checklists. Foster also sent Hindes a letter that informed Hindes that Rose represented a party adverse to the FSLIC in a case called Universal Savings & Loan Association v. First Investment Securities,[1297] which Hindes told Foster "was deemed to be a conflict of such a nature to disqualify [Rose] from being fee counsel on any new receivership."[1298]

On November 3, Foster circulated another memorandum to Rose attorneys:

> [u]nder current FSLIC policy we are disqualified from receiving any new business while [the Universal] case is pending. Accordingly, you should ignore the conflicts memorandum circulated earlier regarding Arkansas savings and loan institutions which are prospects for receivership. We should focus our efforts on trying to represent buyers instead of receivers.[1299]

Foster kept petitioning the FHLBB and FSLIC for the business with another letter to each,[1300]

[1295] Id.

[1296] Id.

[1297] Letter from Vincent Foster Jr., Rose Law Firm attorney, to Tom Hin[d]es, Litigation Division, Office of General Counsel, FHLBB (Nov. 1, 1988) (Doc. No. RIC 113961).

[1298] Letter from Vincent Foster Jr., Rose Law Firm attorney, to James Lantelme, FSLIC attorney at 1-2 (Nov. 8, 1988) (Doc. Nos. RIC113874 through 75).

[1299] Memo from Vincent Foster Jr., Rose Law Firm attorney, to All [Rose Law Firm] Attorneys (Nov. 3, 1988) (Doc. No. 281-00024945).

[1300] Letter from Vincent Foster Jr., Rose law Firm attorney, to Tom Hin[d]es, Litigation Division, Office of General Counsel, FHLBB (Nov. 3, 1988) (Doc. Nos. 281-00029590 through 91); Letter from Vincent Foster Jr., Rose Law Firm attorney, to James Lantelme, FSLIC attorney (Nov. 8, 1988) (Doc. Nos. RIC113874 through 78).

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which was ultimately successful.[1301] Foster's letters disclosed neither Rose's 1985-86 work for Madison Guaranty,[1302] nor Hillary Clinton's business partnership with the McDougals, Rose's work on Castle Grande, or Rose's legal work for Jimmie Alford's company, Precision Industries, all potential conflicts of interest.[1303]

2. Mrs. Clinton Ordered the Destruction of Her Madison Guaranty Files in July 1988.

On July 21, 1988, while the Ward suit against Madison was pending, and nearing trial, Mary Russell, a Rose Firm employee in charge of storing the firm's files, sent Mrs. Clinton a list of her closed files.[1304] Ms. Russell asked Mrs. Clinton to review the list and indicate which files should be kept, which microfilmed, and which destroyed.

Mrs. Clinton reviewed Ms. Russell's cover memorandum and wrote:

> C - Pls review + discuss w/ me. [1305]

"C" was Cheryl Park, Mrs. Clinton's secretary.[1306] On the bottom of the memorandum, Mrs. Clinton wrote a note to Park:

[1301] Letter from Thomas L. Hindes, Litigation Division, Office of General Counsel, FHLBB, to Vincent Foster, Rose Law Firm attorney (Nov. 21, 1988) (Doc. No. RIC113937).

[1302] Rose member Herb Rule thought Foster told the regulators about the prior work, while acknowledging he "could certainly be wrong." Rule 3/3/98 GJ at 78-79. Rule responded, "Not offhand" when asked if he was aware of any documents supporting his recollection. Rule 3/3/98 GJ at 79.

[1303] Lantelme 2/17/98 GJ at 12-16.

[1304] Memo from Mary Russell, Rose Law Firm Operations Manager, to Mrs. Clinton (July 21, 1988) (Doc. Nos. FDICHRC 0162 through 63).

[1305] Id.; see H. Clinton 2/14/96 FDIC Int. at 97-98 (identifying the writing as hers).

[1306] Huber 3/11/94 Int. at 2.

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C - I have marked with D[estroy], K[eep] + M (for microfilm) + marked some files I want pulled + returned to me.

There are, however, so many duplicate listings I can't tell what's being described. Can you review list over next week + mark apparent duplicates + note any file I left off marking. Then discuss w/ Mary Russell

In the memorandum's margin Mrs. Clinton added:

Also -

I would like prepared an updated typed list of all these files + the [form?] they're kept in

- I want list of all matters even if destroyed

The list of Mrs. Clinton's files included four separate Madison Guaranty matters:

A8734	.1	Madison Guaranty S&L		: Babcock
	.2	"	"	: Ward Option
	.3	"	"	: I.D.C.
	.4	"	"	: (Matters 1, 2, 3, 4) 98262[1307]

These files were marked "D" for destroy. In the entire list, twelve files or sets of files were marked to be destroyed, and two were marked to be kept. None were designated for microfilm. Mrs. Clinton identified the handwritten notations designating each file's disposition as hers.[1308]

Mrs. Clinton said she did not recall whether she contacted Seth Ward or anyone at

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[1307] Memo from Mary Russell, Rose Law Firm Operations Manager, to Mrs. Clinton at 2 (July 21, 1988) (Doc. No. FDICHRC 0163). Before Rose produced this document, it redacted the names of files not related to Madison Guaranty.

[1308] H. Clinton 2/14/96 FDIC Int. at 97-98.

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Madison Guaranty before ordering the files' destruction.[1309] She also said that at that point she knew nothing about the Ward v. Madison Guaranty litigation or Madison Guaranty's financial condition.[1310]

3. Madison Guaranty's Suit against Frost & Company.

After Borod & Huggins' 1987 report concluding Madison Guaranty had a viable malpractice claim against Frost & Company, Madison Guaranty and Madison Financial filed a five-count complaint in Arkansas state court against Frost & Company, and other individuals, including Jimmie D. Alford (a Frost director), in 1988.[1311] Madison Guaranty alleged that Frost was negligent when it performed the 1984 and 1985 audits.[1312] After the FDIC took over as Madison Guaranty's receiver, the Rose Law Firm was hired to take over the representation of the FDIC's interest in the pending suit. Hubbell acted as the "[l]ead trial counsel; chief tactician and negotiator in all tactical and settlement discussions;" attended depositions; and was the "primary contact with defense counsel, April Breslaw and other RTC/FDIC personnel."[1313]

[1309] Id. at 101.

[1310] Id. at 101-02.

[1311] Complaint, Madison Guaranty v. Frost, No. 88-1193 (E.D. Ark. Feb. 28, 1988) (Doc. Nos. CT-00000023 through 28).

[1312] Id.

[1313] Rose Law Firm document describing Hubbell's role in the litigation (Mar. 28, 1994) (Doc. No. 105-00077232). Speed 3/17/98 GJ at 60.

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a. Madison Guaranty Was Declared Insolvent; and the FDIC Hired the Rose Law Firm to Represent it in the Frost Litigation.

On February 28, 1989, the FHLBB determined that Madison Guaranty was insolvent and so it obtained an appointment of the FDIC (and later the RTC) as Madison Guaranty's conservator.[1314] At about the same time, Webb Hubbell came under substantial pressure to make more money for the Rose firm. In January 1989, Rose members told Hubbell they "wanted [him] out of firm management altogether."[1315] Hubbell "resolved to build up [his] practice, increase [his] billings[, and] began lawyering with a vengeance."[1316] Along with Vince Foster, Hubbell focused on obtaining more FSLIC and FDIC work, as he "was in the process of trying to dramatically increase [his] billings at the firm."[1317]

[1314] Notice of Removal, Ward v. FDIC, No. 89-180 (E.D. Ark. Mar. 10, 1989) (Doc. No. NE-00000002). See Response of Federal Deposit Insurance Corporation, Conservator for Madison Guaranty Savings & Loan Association, in Opposition to Motion to Remand and Brief in Support, Ward v. FDIC, No. 89-180 (E.D. Ark. Apr. 12, 1989) (Doc. Nos. NE-00000466 through 88) (FDIC filing in Ward v. Madison Guaranty that explains the history of the relationships with FHLBB, FSLIC, and FDIC with Madison); FHLBB Appointment of Conservator for Madison Guaranty Savings and Loan Association, McCrory, AR, Order 89-483 (Feb. 28, 1989) (Doc. Nos. NE-00000599 through 616) (Order No. 89-483, which appointed the FSLIC as Madison's "sole conservator" and which states that Madison Guaranty "is insolvent in that its assets are less than its obligations to its creditors and others, including its withdrawable account holders"); Management Agreement among the FHLBB, the FSLIC, and the FDIC (Feb. 7, 1989) (Doc. Nos. NE-00000617 through 49).

[1315] Hubbell, Friends in High Places 145 (1997).

[1316] Id. Hubbell's Rose Law Firm "fee allocations" that related to FHLBB/FSLIC/FDIC/RTC work increased dramatically after January 31, 1989. Those fee allocations nearly quadrupled from January 31, 1989 to January 31, 1990. By January 31, 1992, Hubbell's FHLBB, FSLIC, FDIC, and RTC fee allocations had increased more than six times from the amount Hubbell was allocated on January 31, 1989. The allocations rose from $13,674.07 for the 1988-89 fiscal year to $88,961.49 for the 1991-92 fiscal year. Fee allocations represent monies collected by and allocated to a particular attorney at Rose. Independent

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On Tuesday, February 28, 1989, the same day Madison Guaranty was declared insolvent, Vince Foster sent letters to the FHLBB, FSLIC, and the FDIC soliciting legal work for the Rose firm. He did not mention the Rose Law Firm's prior work for Madison Guaranty in those letters, although he did acknowledge that:

> From time to time we have provided specialized services to some savings and loan associations in such areas as employment discrimination, work-out of participation loans and bankruptcy. We do not represent any of these clients on an on-going basis, other than Savers Federal Savings & Loan Association in the labor and employment area. Also, we have represented clients in borrowing and other transactions with certain savings and loan associations. Accordingly, while there may be individual transactions or situations where a conflict of interest could arise, we believe that the Firm would not be ethically disqualified from serving as fee counsel as generally discussed herein.[1318]

After Madison Guaranty was declared insolvent, the FHLBB appointed the FSLIC to act as sole conservator.[1319] FSLIC asked the FDIC to serve as FSLIC's managing agent.[1320] April

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Counsel Request for Fee Allocations (Feb. 23, 1998) (Doc. No. 2625-00001253).

[1317] Hubbell, Friends in High Places 146-47 (1997).

[1318] Letter from Vincent Foster Jr., Rose Law Firm attorney, to John V. Thomas, Assistant General Counsel, RTC and Donald B. McKinley, Regional Counsel for Liquidations in Dallas at 8 (Feb. 28, 1989) (Doc. No. 281-00003368). The language of Foster's February 28 letter mirrors a similar solicitation letter Foster and Herb Rule sent to the FSLIC on October 3, 1986. See Fax transmittal form and letter from Herbert C. Rule III, Rose Law Firm attorney, and Vincent Foster Jr., Rose Law Firm attorney, to John Beaty, Litigation Division, Office of General Counsel, FHLBB (Oct. 3, 1986) (Doc. Nos. 281-00029947 through 54).

[1319] FHLBB Appointment of Conservator for Madison Guaranty Savings and Loan Association, McCrory, AR, Order 89-483 (Feb. 28, 1989) (Doc. Nos. CT-00000429 through 47). Cf. Letter from FHLBB/FSLIC to Beverly Bassett, Savings and Loan Supervisor, ASD (Mar. 2, 1989) (Doc. No. 105-00022985).

[1320] Notice Of Removal, Madison Guaranty v. Frost, No. LR-C-89-216 (E.D. Ark. Mar. 30, 1989) (Doc. Nos. CT-00000008 through 10). See Management Agreement among the FHLBB, FSLIC, and FDIC (Feb. 7, 1989) (Doc. Nos. CT-00000448 through 80); Motion To Substitute Party, Madison Guaranty v. Frost, No. LR-C-89-0216 (E.D. Ark. Nov. 24, 1989)

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Breslaw, an FDIC attorney, determined that Borod & Huggins's successor, Gerrish & McCreary, had too many conflicts of interest to represent the FDIC in the Frost case.[1321] She contacted Rick Donovan at Rose and asked if Rose could take the case. Donovan directed her to Hubbell.[1322] Webb Hubbell was the Rose attorney responsible for reporting all actual and potential conflicts of interest to the FDIC and the RTC.[1323]

Hubbell circulated to other Rose attorneys a memorandum about conflicts of interest related to Madison v. Frost.[1324] According to Hubbell he "was aware that Mrs. Clinton had been the billing attorney in 1985 and 1986 . . . [and] that for a period of time, [Rose] had done some work for Madison."[1325] According to Hubbell, Rick Massey "disclosed that there had been prior work done at the Securities Department," either in the fall of 1988 or after Hubbell circulated his March 21, 1989 memorandum.[1326] Hubbell claimed later that he did not consider the prior Rose work to be a conflict "because we were standing in the shoes of Madison in suing its former

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(Doc. Nos. CT-00000486 through 87).

[1321] See Breslaw 6/16/94 GJ at 8.

[1322] See Hubbell 1/11/94 FDIC Int. at 1.

[1323] Donovan 1/21/98 GJ at 13-14; Donovan 1/6/98 GJ at 102; Speed 3/17/98 GJ at 72-73.

[1324] Memo from Webb Hubbell, Rose Law Firm attorney, to All [Rose Law Firm] Attorneys (Mar. 21, 1989); House Banking Comm. Hearing, supra note 997, at 47 (Aug. 10, 1995) (testimony of W. Hubbell).

[1325] House Banking Comm. Hearing, supra note 997, at 47 (Aug. 10, 1995) (testimony of W. Hubbell).

[1326] Id. at 59. Under either scenario, Hubbell knew about Rose's Arkansas Securities Department work at the time Rose accepted the Frost case, and concealed that information from the FDIC and the RTC.

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accountants."[1327]

Hubbell gave varying accounts of his initial conversations with Breslaw. In testimony before the grand jury in 1995, after Hubbell had agreed to cooperate with the government, Hubbell acknowledged that Breslaw asked about conflicts and that he did check into them. Hubbell claimed he informed Breslaw about the conflicts and that she stated they were not a problem.[1328]

In his Senate testimony, Hubbell claimed he told Breslaw that Rose did some minor lending work for Madison Guaranty.[1329] Hubbell later slightly altered this:

> Q. Did you tell [Breslaw] the nature of the work that the Rose Law Firm had done for Madison before?
>
> A. Not initially, no.
>
> Q. Why didn't you?
>
> A. At the time I was focusing on the conflict between Madison and Frost, not on the conflict between my father-in-law and Madison or the firm and Madison. I looked on Madison -- the RTC taking over Madison as stepping into the shoes of Madison when it sued Frost, and I focused on

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[1327] House Banking Comm. Hearing, supra note 997, at 49 (Aug. 10, 1995) (testimony of W. Hubbell). Hubbell later wrote that Vince Foster informed him that the FDIC told Rose that they "were eligible to work on all the thrift closings except Madison's -- we had too many conflicts there." Hubbell, Friends in High Places 146 (1997). No evidence supports Hubbell's assertion that the FDIC found Rose disqualified from working for the Madison Conservatorship. And, more importantly, Hubbell's comment reveals that he understood that Rose's prior work could constitute a disqualifying conflict of interest. In fact, Hubbell admitted as much: "I naturally assumed that the conflicts involved the Rose firm's past work for Madison and Seth's lawsuit against Madison." Id.

[1328] Hubbell 6/9/95 GJ at 48-51.

[1329] Senate Whitewater Comm. Hearing, supra note 147, at 98-101 (Dec. 1, 1995) (testimony of W. Hubbell).

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that conflict.

Q. What did you tell her about your father-in-law?

A. At that first conversation nothing more.[1330]

Breslaw testified: "I have no recollection of ever being told by anyone at the Rose Law Firm that the Rose Law Firm had previously represented Madison before it closed."[1331] Furthermore, she testified, "[w]hen I retained the Rose Firm to work on Madison -- the Madison accounting case, it disclosed no conflicts of interest."[1332]

[1330] Hubbell 8/22/96 GJ at 114-15.

[1331] Breslaw 7/28/94 Senate Banking Comm. Depo. at 28-29.

[1332] Senate Whitewater Comm. Hearing, supra note 147, at 25 (Nov. 30, 1995) (testimony of A. Breslaw). Breslaw was criticized by many in Congress and elsewhere for her decision to hire Rose for the Frost case. Ms. Breslaw explained:

> When a client hires a law firm, and the government was a client, the law firm has an obligation to ensure that there are no conflicts of interest. The ethical rules require lawyers to do this, even if they are not asked. The client cannot do this job itself. Short of issuing a subpoena, the government does not know and has no way of knowing who the Rose Law Firm's other clients are. Only the Rose Law Firm has that information. When I retained the law firm on behalf of the government, it disclosed no conflicts of interest. . . . The conclusion that others have made, that there was a conflict of interest, is based on information that I did not have.

House Banking Comm. Hearing, supra note 997, at 45-46 (Aug. 10, 1995) (testimony of A. Breslaw). When asked whether she believed Hubbell had lied to her, she stated "Yes, sir, I do." Senate Whitewater Comm. Hearing, supra note 147, at 129 (Nov. 30, 1995) (testimony of A. Breslaw). Hubbell replied, "I'm sorry she feels that way. I don't know exactly what the basis of that is, but in any regard, I would apologize if I did lie to her but I don't believe I did, Senator, but I don't know what the basis of her statement was." Senate Whitewater Comm. Hearing, supra note 147, at 138 (Dec. 1, 1995) (testimony of W. Hubbell).

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b. The FDIC Completed a Report on Madison Guaranty and Recommended Suit against Mitchell, Williams, Selig, Jackson & Tucker; Because the Rose Law Firm's Role Was Unknown, it Was Not Named.

Once Madison Guaranty entered conservatorship, during March and April of 1989, the FDIC investigated Madison Guaranty.[1333] FDIC Liquidation Assistant Michael D. Hamerly conducted the investigation.[1334] Hamerly spoke with Madison Guaranty's examiners, and he read Madison Guaranty's board minutes and the FHLBB examination reports.[1335] Hamerly also reviewed correspondence between the Rose Law Firm and April Breslaw.[1336]

On April 10, 1989, Hamerly issued two memoranda. Hamerly's first memorandum recommended terminating the directors and officers liability investigation of Madison Guaranty on the grounds that any recovery would likely be swallowed by legal fees.[1337]

Hamerly's second memorandum reviewed Madison Guaranty's history, discussed James B. McDougal's operation of the institution, and explained that McDougal and "his group of

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[1333] Hamerly 3/17/98 GJ at 5.

[1334] Id. at 4-6.

[1335] Id. at 6-7.

[1336] Letter from April Breslaw, RTC attorney, to Rick Donovan, Rose Law Firm Attorney, (Mar. 24, 1989) (cc: Mike Hamerly) (Doc. No. 281-00003360); Letter from April Breslaw, RTC attorney, to Billy Carroll, Madison Guaranty Savings and Loan Managing Agent (Mar. 28, 1989) (cc: Mike Hamerly, Rick Donovan, Paul Jeddeloh) (Doc. No. 0000028); Hamerly 3/17/88 GJ at 9-13.

[1337] Confidential Memorandum from Michael D. Hamerly, FDIC Investigator, to Cecil Underwood, Assistant General Counsel; John Thomas, Assistant General Counsel; Roy Ahrens, Senior Attorney; April Breslaw, RTC attorney; Paul Drago, SLS/Investigations (Apr. 10, 1989) (Doc. No. 281-00001712); Hamerly 3/17/98 GJ at 14-20.

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insiders . . . enriched themselves to the detriment of the association."[1338] Hamerly's memorandum discussed the Borod & Huggins Report,[1339] and relied on the 1986 FHLBB report's conclusion that McDougal used Madison Guaranty to "'develop large land developments [and] to divert substantial amounts of funds from the projects to himself and others, who are considered to be insiders . . . .' The losses on those projects rendered the association insolvent."[1340]

Hamerly noted that in 1988, Madison Guaranty filed a $10 million lawsuit against Frost & Company, observing, "[t]he association's outside counsel estimated that the probability of prevailing is good."[1341] Hamerly identified "[o]nly one potential attorney malpractice claim" -- against the firm of Mitchell, Williams, Selig, Jackson & Tucker for "work that the Mitchell firm performed for the subject association on the Maple Creek development project."[1342] Hamerly's second memorandum stressed that "[a]dditional potential claims may be disclosed as FDIC attorneys become more familiar with the many lawsuits that Madison Guaranty is involved in."[1343]

In 1986, federal examiners pointed to the Maple Creek Farms as one of the three largest

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[1338] Survey Summary Report from Michael D. Hamerly, FDIC Investigator, to Cecil Underwood, Assistant General Counsel; John Thomas, Assistant General Counsel; Roy Ahrens, Senior Attorney; April Breslaw, RTC attorney; Paul Drago, SLS/Investigations at 2 (Apr. 10, 1989) (Doc. Nos. 281-00001713-0000714).

[1339] Id.

[1340] Id.

[1341] Id. at 5 (Doc. No. 281-00001717).

[1342] Id. at 6 (Doc. No. 281-00001718).

[1343] Id.

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real estate projects causing substantial losses to Madison Guaranty,[1344] Castle Grande, and Twelfth & Main being the other two.[1345] Hamerly testified that if he had known that the Rose Law Firm had been involved in the Castle Grande project, it would have been mentioned in his second memorandum for possible civil action.[1346] Hamerly was not, however, aware that Rose represented Madison Guaranty in the Castle Grande matter.[1347] Rose's involvement was at that time unknown to federal regulators.[1348]

Hamerly also referred to the Borod & Huggins Report in his second memorandum, noting that Madison Guaranty made a "major criminal referral" "encompass[ing] all of the known improper activities of James McDougal, his family and his associates."[1349] Hamerly concluded that "[c]onsiderable criminal activity apparently occurred at Madison Guaranty" and that "[a]n FDIC Fraud Squad probably could find instances that have not yet been revealed. However, the

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[1344] FHLBB Office of Examinations and Supervision, Report of Examination (as of Mar. 4, 1986) (Doc. Nos. 56-00014666 through 68).

[1345] Id. (Doc. Nos. 56-00014668 through 69; 56-00014673 through 74).

[1346] Hamerly 3/17/98 GJ at 40-43, 51-53.

[1347] Id. at 51.

[1348] The FDIC and later the RTC did not learn of the Rose Law Firm's role in the Castle Grande transactions until the investigations by the FDIC-OIG and RTC-OIG that resulted in reports dated July 28, 1995 and August 3, 1995. And, of course, the extent of the Rose Law Firm's involvement with the Castle Grande matter was not more fully known until the investigations that followed the disclosure of the billing records at the White House on January 5, 1996. Hamerly 3/17/98 GJ at 40-43; 51-53.

[1349] Survey Summary Report from Michael D. Hamerly, FDIC Investigator, to Cecil Underwood, Assistant General Counsel; John Thomas, Assistant General Counsel; Roy Ahrens, Senior Attorney; April Breslaw, RTC Attorney; Paul Drago, SLS/Investigations at 8 (Apr. 10, 1989) (Doc. No. 281-00001720).

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FBI is actively investigating this institution."[1350] Therefore, Hamerly recommended that "[t]he FBI [agent] or the U.S. Attorney should be contacted to determine their scope, before additional resources are dedicated to this operation."[1351] In response to Hamerly's two memoranda, April Breslaw recommended terminating the Madison Guaranty investigation, and her superiors agreed.[1352]

c. Sue Strayhorn and Others Complained about Rose's Conflicts of Interests.

In June 1989, approximately three months after the FDIC hired Rose, a "noticeably agitated" Madison Guaranty employee, Sue Strayhorn, informed Paul Jeddeloh, Madison Guaranty's intervention attorney, that Hubbell, Seth Ward, and Seth Ward II were in-laws.[1353] Jeddeloh told Breslaw,[1354] but felt she was unresponsive to what he believed was a significant conflict of interest.[1355] On June 8, 1989, Jeddeloh wrote a letter to Breslaw highlighting Hubbell's

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[1350] Id.

[1351] Id.

[1352] Breslaw 10/23/95 Senate Banking Comm. Depo. at 188-89.

[1353] Jeddeloh 3/15/94 FDIC-OIG Int. at 6. Jeddeloh's role "was to enter the institution with representatives of FHLBB, FSLIC, and FDIC, assist in serving the 'closing' papers on the CEO of Madison and take control and assist other FDIC staff and an inventory of the institution, its assets, and litigation on behalf of the conservator." Jeddeloh was also responsible for: 1) "meeting with outside counsel hired by Madison to review pending matters, conflicts of interest, and to facilitate referrals to other counsel where appropriate;" 2) "preparing a litigation report" for FDIC officials; and 3) "obtaining local representation of the institution . . . for general institution matters." Id. at 2-4.

[1354] Breslaw 10/23/95 Senate Banking Comm. Depo. at 244-45; Jeddeloh 3/15/94 FDIC-OIG Int. at 6.

[1355] Jeddeloh 3/15/94 FDIC-OIG Int. at 6-7.

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in-law relationship with Seth Ward and Seth Ward II.[1356] Jeddeloh explained that both Wards had suits pending against the Madison Guaranty conservatorship,[1357] and that Hubbell appeared to have some interest.[1358]

Breslaw addressed the Ward matter with Rick Donovan on June 20, 1989.[1359] Donovan confirmed that Ward and Hubbell were in-laws, but Donovan stated he did not think Hubbell had any involvement in the Ward litigation.[1360]

Breslaw then spoke with Hubbell:

> [Hubbell] went to some lengths to make me have the impression that he was not particularly close to his father-in-law and that he was not representing his father-in-law and that he would not represent his father-in-law in the future. I said, please put that in writing. Confirm what you've just said in writing and send me a letter to that effect. And I believe he did that in June of 1989.[1361]

Breslaw kept the Frost case at the Rose Law Firm in part based on Hubbell's representation that Ward was not a Rose client.[1362]

[1356] Letter from Paul Jeddeloh, FDIC attorney, to April Breslaw, RTC attorney (Jun. 8, 1989).

[1357] Id.

[1358] Id.

[1359] Donovan 1/21/98 GJ at 18-20; Donovan's handwritten notes of conversation with Breslaw (June 20, 1989) (Doc. No. RLF1 48859).

[1360] Donovan 1/6/98 GJ at 93-94.

[1361] Breslaw 6/6/95 Senate Banking Comm. Depo. at 23; see also Breslaw 10/23/95 Senate Banking Comm. Depo. at 246-47; Senate Whitewater Comm. Hearing, supra note 147, at 25-26, 41-42 (Nov. 30, 1995) (testimony of A. Breslaw); Breslaw 6/7/94 Fiske Int. at 2-3.

[1362] Breslaw 10/23/95 Senate Banking Comm. Depo. at 247-49; see id. at 249 ("I believe that if I had understood in June of 1989 that Hubbell did represent Ward or Ward's interests, that I would have taken that up with supervisors. And I don't know what they would have advised me to do").

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Hubbell directed Rick Donovan to draft a letter to David Paulson, the FDIC's managing agent for Madison Guaranty.[1363] Donovan gave the draft to Hubbell.[1364] Donovan testified he was unaware of Hubbell's and Hillary Clinton's Castle Grande work for Madison Guaranty and Seth Ward when he drafted the letter.[1365] On June 23, 1989, Breslaw sent a letter to David Paulson, explaining that Hubbell did not represent Ward, that Hubbell had not and would not submit any pleadings for Ward.[1366]

On June 27, 1989, Hubbell billed the FDIC for "letter to Paulson; telephone conference with and letter to Gary Green, conference with R. Donovan."[1367] On June 28, 1989, Hubbell sent the letter to Paulson, copying April Breslaw and Rick Donovan.[1368] The letter read:

> Dear Mr. Paulson:
>
> At April Breslaw's request, I am writing this letter. This letter is to advise you that I have not represented Mr. Seth Ward in connection with any issue or matter relating to his disputes with Madison Guaranty. It is my understanding that Mr. Ward was represented by Wright, Lindsey & Jennings until recently. When the FDIC became managing agent for the FSLIC as Conservator for Madison Guaranty, Mr. Thomas Ray of the firm Shultz, Ray & Kurrus began representing Mr. Ward. In addition, I do not represent Mr. Seth Ward, II in regard to any disputes he may have with Madison Guaranty. I have no intention of representing

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[1363] Donovan 1/21/98 GJ at 20-22.

[1364] Id.

[1365] Id. at 24-28. Donovan forgot the client for whom he had drafted the wet/dry memos to Mrs. Clinton. He also had no knowledge of Hubbell's involvement in the Ward case.

[1366] Letter from April Breslaw, RTC attorney, to David Paulson, Madison Guaranty's FDIC Managing Agent (June 23, 1989) (Doc. Nos. 000021 through 22).

[1367] Rose Law Firm Billing Records (Jun. 27, 1989) (Doc. Nos. 264-00020291; 264-00020172; 264-00004969, 72).

[1368] Donovan did not know whether Hubbell edited Donovan's draft of the June 28, 1989 letter. Donovan 1/21/98 GJ at 23-24.

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Mr. Ward or his son in the future concerning any matter relating to Madison Guaranty.[1369]

In 1989, as part of his work on the Frost case, Hubbell read the 1986 FHLBB exam reports, and, in particular, the May 8, 1986 exam report criticizing Ward and the Castle Grande transactions.[1370] In 1990 and 1991, Hubbell read the Borod & Huggins Report, which described Ward's dealings with Madison as involving fictitious sales, sham loans, and potential civil and criminal liability.[1371] "When I read those reports, obviously it raised a flag to me," Hubbell said later, "and I read them, and I was concerned about it."[1372]

[1369] Letter from Webb Hubbell, Rose Law Firm attorney, to David Paulson, Madison Guaranty's FDIC Managing Agent (June 28, 1989); see also Hubbell 12/27/95 Telephone Int. at 39 (identifying letter). In her June 1994 sworn statement with the RTC-OIG, Breslaw stated as follows:

> I have also been shown a copy of a June 28, 1989 letter from Hubbell to Paulson addressing the issue of representing Ward. This is the letter that Hubbell wrote at my direction. As I look at the letter today, I note that Hubbell limited his comments about not representing or intending to represent Ward to matters involving Madison. I do not recall noting this limitation in 1989.

Breslaw 6/8/94 RTC-OIG Sworn Statement at 10-11; see also Senate Whitewater Comm. Hearing, supra note 147, at 26 (Nov. 30, 1995) (testimony of A. Breslaw). In her RTC statement Breslaw added, "I am not aware of any representation that Hubbell ever undertook for Seth Ward or Seth Ward II." Breslaw 6/8/94 RTC-OIC Statement at 18 (sworn testimony).

[1370] Senate Whitewater Comm. Hearing, supra note 147, at 217-18 (Feb. 7, 1996) (testimony of W. Hubbell).

[1371] See Senate Whitewater Comm. Hearing, supra note 147, at 217-18 (Feb. 7, 1996) (testimony of W. Hubbell) (Hubbell discusses his review of the 1986 FHLBB reports that discussed the IDC/Castle Grande transactions); id. at 16-17 (indicating that Hubbell did not disclose any of Rose's involvement in the IDC/Castle Grande-Seth Ward transactions to April Breslaw); id. at 233 ("[A]bout the same time I was reading exam reports and other reports and I was concerned about the allegations that were being made").

[1372] Senate Whitewater Comm. Hearing, supra note 147, at 217-18 (Feb. 7, 1996) (testimony of W. Hubbell); see id. at 16-17 (indicating that Hubbell did not disclose any of

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Additionally, Seth Ward's loans from Madison Guaranty, including the IDC and Castle Grande loans, were potential evidence of damages in the Frost suit.[1373] Rose lawyers prepared exhibits detailing the "bad land deals" causing Madison Guaranty's losses -- including those at Castle Grande.[1374] Rose and FDIC lawyers later removed the Ward loans from damage calculations because they "did not have the jury appeal we were looking for."[1375] Hubbell says that as far as Breslaw was concerned, his June 28, 1989 letter put the Ward-Hubbell conflict issue to rest.[1376] But in late June or early July of 1989, FDIC credit specialist Ken Schneck was assigned to the Madison Guaranty conservatorship.[1377] Sue Strayhorn told him that Webb Hubbell was Seth Ward's son-in-law, that Ward was a Madison Guaranty borrower, that Ward was suing the conservatorship,[1378] and that Seth Ward II was also in litigation against Madison

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Rose's involvement in the IDC/Castle Grande-Seth Ward transactions to April Breslaw); id. at 233 ("[A]bout the same time I was reading exam reports and other reports and I was concerned about the allegations that were being made").

[1373] See Speed 5/19/94 Fiske GJ at 29-30.

[1374] Speed 3/17/98 GJ at 52-55; Rose Law Firm exhibit titled "Madison Guaranty Savings & Loan, Where did All the Money Go?" (Doc. No. 105-00073039) and Rose Law Firm exhibit titled "Madison Guaranty Savings & Loan Association Affiliated Entities" (Doc. No. 105-00019639).

[1375] Hubbell did not participate in the decision to remove the Ward loans, and neither Rick Donovan nor Gary Speed, Hubbell's co-counsel who were involved with the decision, knew of Hubbell's, Mrs. Clinton's, and Rose's involvement with Ward and the Castle Grande transactions. See Donovan 1/6/98 GJ at 92-98; Speed 3/17/98 GJ at 71-72.

[1376] Hubbell 1/11/94 FDIC Int. at 2 ("Last time the relationship with either Ward came up during the Frost case was when he wrote the June 28th letter").

[1377] Schneck 3/21/94 FDIC-OIG Statement at 1.

[1378] Id. at 1-2. Schneck stated that he did not remember exactly who it was with whom he spoke, though "[i]t may have been Sue." Schneck "d[id] not recall Sue's last name," but he believed it to be Strayhorn. Id.

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Guaranty.[1379]

In late July or early August 1989, Schneck, Paulson, and Breslaw discussed the Frost case with Rose attorneys.[1380] Schneck told Breslaw what he had learned regarding Hubbell and Ward,[1381] and that he thought she should "hire a new law firm. Ms. Breslaw told [Schneck] that this was no concern of [his] and that it was a [FDIC Professional Liability Section] issue."[1382] Schneck then raised the issue with John O'Donnell, the FDIC's "S&L project coordinator for Arkansas."[1383] Schneck warned O'Donnell about the Hubbell-Ward connection:

> In the process of our suit against Frost & Company, we will most certainly examine practices and procedures Madison Guaranty used in day to day operations. We are making this information available, in detail, to Hubbell. To believe that none of this information will make it back to his family is naive. I do not know whether or not any information upcoming will be damaging. However, I would like someone with a wider scope of authority to review the situation and possibly eliminate this conflict.[1384]

In 1994, Breslaw stated:

> I do not recall ever discussing Schneck or the possibility of removing Schneck from any involvement with the Frost suit, with Paulson or anyone else. As a staff attorney, I had no authority to give such direction to a managing agent. However, I do wonder whether Schneck, a credit specialist, had any legitimate reason to have been involved in the matter. I do not know whether he had any documented

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[1379] Id. at 2.

[1380] Id.

[1381] Id.

[1382] Id.

[1383] Id.; Letter from Ken K. Schneck, Credit Specialist, to John O'Donnell, FDIC S&L Project Area Coordinator (Aug. 10, 1989).

[1384] Letter from Ken K. Schneck, Credit Specialist, to John O'Donnell, FDIC S&L Project Area Coordinator (Aug. 10, 1989).

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basis for suggesting that Hubbell might behave unethically.[1385]

d. Hubbell Concealed Potential Conflicts of Interest Brought to His Attention from the FDIC and RTC while the Frost Suit Was Pending.

i. Hubbell's Knowledge of Rose Billing Records.

In late 1989 or early 1990, Rose attorney Gary Speed reviewed papers from Frost's Madison Guaranty audits. Speed "came across a standard audit response letter to Frost and Company from the Rose Law Firm."[1386] Speed learned that Rose had performed legal work for Madison Guaranty relating to Frost.[1387] Speed also found a letter signed by Hillary Clinton to Frost mentioning "their work in connection with the audit."[1388] He "wanted to find out the nature of the work and to assure [himself] that there were no conflicts of interest."[1389] Speed later remembered, "[w]hen I found that letter, then I investigated further and found where we had done some work in this time frame."[1390]

Speed went to Rose's accounting department and requested copies of the bills Rose had submitted to Madison Guaranty.[1391] Speed reviewed the bills, and spoke with Rick Massey about

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[1385] Breslaw 6/8/94 RTC-OIG Aff. at 11.

[1386] Speed 6/30/95 RTC-OIG Statement at 5.

[1387] Speed 8/7/96 Int. at 1.

[1388] Speed 3/17/98 GJ at 37.

[1389] Speed 6/30/95 RTC-OIG Statement at 5; see also Speed 5/19/94 Fiske GJ at 80-89 (discussing Speed's discovery during the Frost case of Rose's 1985-1986 work for Madison and Speed's discussions with Hubbell about the need for disclosure to the FDIC and the RTC).

[1390] Speed 3/17/98 GJ at 38.

[1391] Speed 6/30/95 RTC-OIG Statement at 5; Speed 8/7/96 Int. at 1-2.

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Rose's work for Madison Guaranty before the Arkansas Securities Department.[1392] Speed also spoke with Hubbell, who "was the lead attorney on the Frost case, was the primary contact with FDIC, and was knowledgeable about the ethical rules concerning conflicts."[1393] Speed asked Hubbell if he was aware of Rose's prior work for Madison Guaranty:

> [Hubbell] said he had been aware of some collection work. I showed him the bills I had retrieved concerning the ASD work. He said he would talk about it with April Breslaw. . . . Within a day or so, Hubbell told me that he had spoken to Ms. Breslaw about the ASD work and that she agreed it was not a conflict. I recall that conversation clearly. I do not believe that I ever spoke to Ms. Breslaw personally about the matter, and I do not believe I ever wrote anything about the matter.[1394]

Speed showed the billing records to Hubbell "to make sure that he was aware that we had done some work for [Madison Guaranty]."[1395] Speed still did not know that Hubbell had done legal work for Seth Ward, or that Mrs. Clinton had billed Madison Guaranty for multiple conferences with Seth Ward about IDC.[1396] When Speed reviewed the billing records, he noted that Mrs. Clinton and Rick Massey had recorded most of the billable time.[1397]

Breslaw later testified that Hubbell did not disclose Rose's work for Madison Guaranty

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[1392] Speed 5/19/94 Fiske GJ at 86; Speed 8/7/96 Int. at 1-2.

[1393] Speed 6/30/95 RTC-OIG Statement at 5; see also Speed 8/7/96 Int. at 2-3 (describing Speed's discussion with Hubbell about the Rose Madison Guaranty billing records).

[1394] Speed 6/30/95 RTC-OIG Statement at 5-6; see Speed 5/19/94 Fiske GJ at 88 ("Well, at a later time, [Hubbell] came back to me and said, 'I've talked with April Breslaw about these and she says there's no problem . . . that it's just not a problem'").

[1395] Speed 3/17/98 GJ at 38; see also Speed 8/7/96 Int. at 2 (indicating that Speed gave the Rose Madison Guaranty billing records to Hubbell).

[1396] Speed 3/17/98 GJ at 38, 46-47.

[1397] Speed 8/7/96 Int. at 2.

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before the ASD, though she added that whether this would have disqualified Rose was a closer question than the work for Ward or the IDC/Castle Grande transactions.[1398]

ii. Hubbell's Review of the Borod & Huggins Report.

In January 1990 -- at the same time that Webb Hubbell negotiated an indemnification agreement between Ward and Ward's former law firm in connection with Ward v. RTC [1399] -- Rose requested a copy of the Borod & Huggins Report.[1400] Gary Speed described some difficulty they encountered:

> For months and months, we had heard about the Borod & Huggins report, but Ms. Breslaw had never sent it to us. And my recollection is that the first time we ever saw the Borod & Huggins report, we had information that it was already in the hands of the Frost & Company's attorneys, Mr. [Peter] Kumpe. And Mr. Kumpe, at trial, was going to take the Borod & Huggins report and essentially, as we were pointing the finger at his clients, the accountants, the accountants' attorney was going to point the finger at Mr. McDougal and the Henleys and all these other people that were involved in these related party transactions. So it really came to a point where we really needed to know what was in the Borod & Huggins report because that had a material effect on our lawsuit that we were trying to maintain against the accountants.[1401]

Madison Guaranty employee Sue Strayhorn objected to providing Rose a copy of the Borod & Huggins Report because Ward and Hubbell were in-laws. On January 25, 1990,

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[1398] Senate Whitewater Comm. Hearing, supra note 147, at 40-41 (Nov. 30, 1995) (testimony of A. Breslaw). Hubbell testified he did not recall whether he discussed the ASD work with Breslaw, but he would not disagree with Breslaw's statement that he had not told her of the ASD work. Hubbell 4/20/95 RTC-OIG/OIC Int. at 18; Senate Whitewater Comm. Hearing, supra note 147, at 114-17 (Dec. 1, 1995) (testimony of W. Hubbell).

[1399] Hubbell 4/20/95 RTC-OIG Int. at 23 (Hubbell was asked by Wright, Lindsey & Jennings to help get an indemnification agreement with Ward regarding the funds Madison Guaranty had deposited into escrow).

[1400] Speed 3/17/98 GJ at 19-21.

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Strayhorn wrote Breslaw opposing giving the Borod & Huggins Report to Rose.[1402] Strayhorn detailed various concerns, including protection of attorney-client privilege and the discussion of Ward's involvement in Castle Grande that was still being litigated between Ward and Madison Guaranty, which could jeopardize any recovery by Madison Guaranty in that or other litigation, such as that against the Frost accountants.[1403]

Breslaw spoke with her supervisor, John Beaty, who approved her decision to provide Hubbell with the Borod & Huggins Report.[1404] Breslaw understood from her previous discussions with Hubbell that he and Ward were related.[1405]

On Thursday, February 1, 1990, Hubbell met with Gary Speed and spoke with April Breslaw.[1406] Breslaw sent the Borod & Huggins Report to Rose,[1407] and Hubbell and Speed reviewed the Report the next day.[1408] Hubbell also billed the RTC for his time reviewing the

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[1401] Id. at 21-22.

[1402] Letter from Sue Strayhorn, Madison Guaranty Corporate Secretary, to April Breslaw, RTC Attorney (Jan. 25, 1990).

[1403] Id.

[1404] Breslaw 6/6/95 Senate Banking Comm. Depo. at 24-25.

[1405] Breslaw 6/8/94 RTC-OIG Sworn Statement at 9; see Breslaw 6/6/95 Senate Banking Comm. Depo. at 24-25.

[1406] Rose Law Firm Billing Records (Mar. 7, 1990) (Doc. No. 264-00020682).

[1407] Memo from April Breslaw, RTC Attorney, to Gary Speed, Rose Law Firm Attorney (Feb. 1, 1990) (Doc. No. RLF1 28105).

[1408] Rose Law Firm Daily Timesheet for Gary Speed (Feb. 2, 1990) (Doc. No. 264-00009459); Rose Law Billing Record (Mar. 7, 1990) (Doc. No. 264-00020682).

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Report on February 8, 1991, and February 12, 1991.[1409]

During the subsequent investigations, Hubbell initially denied that he ever saw the Borod & Huggins Report.[1410] Later he claimed that his Frost co-counsel initially kept the report from him but that he looked at the report later,[1411] or that he did not look at the Report until absolutely necessary because of the revelation about Rose Associate Pat Heritage's prior role at Madison Guaranty, which had not been previously disclosed.[1412] The FBI found Hubbell's latent fingerprints on five pages of the report, including pages discussing Seth Ward's role in various transactions and possible criminal liability.[1413] Hubbell's billing records reflect that on February 2, 1990, he billed the RTC for reviewing the report.[1414]

iii. Hubbell's Knowledge of Rose Associate Pat Heritage's Involvement with Madison.

Rose attorneys focused on the Borod & Huggins Report's description of Patricia Heritage's employment at Madison Guaranty from 1985 to 1986, because Heritage had recently started as a Rose associate. The Borod & Huggins Report claimed that Heritage, who worked as a secretary at Madison Guaranty, created fictitious Madison Financial board meeting minutes at

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[1409] Rose Law Firm Billing Records (Mar. 14, 1991) (Doc. Nos. 264-00020802 through 03).

[1410] Hubbell 1/11/94 FDIC-OIG Int. at 1-2; Hubbell 3/16/95 FDIC-OIG Int. at 7; see Downing 1/22/98 GJ at 13-14.

[1411] Hubbell 8/22/96 GJ at 115-116.

[1412] Hubbell 4/20/95 RTC-OIG/OIC Int. at 17, 19.

[1413] Federal Bureau of Investigation Laboratory Report (Nov. 21, 1997).

[1414] Hubbell 4/20/95 RTC-OIG/OIC Int. at 17. Jack Smith testified that if the FDIC knew Hubbell would bill the agency for reviewing the Borod & Huggins Report, Rose would not have

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John Latham's direction.[1415] With regard to bonuses paid to Madison insiders, Heritage told the Borod & Huggins investigators that "they had to specifically make sure the bonuses were approved in the minutes prior to the time that they were actually funded by [Madison Guaranty] or [Madison Financial]."[1416] Heritage specifically mentioned, "a board resolution dated April 4, 1986 authorizing Madison Financial to borrow $300,000 from Seth Ward."[1417] This was the resolution providing Madison Financial with authority for the unfunded $300,000 April 7, 1986 cross note (described in Chapter 1 of this Part). The Borod & Huggins Report listed Heritage as third (after Jim McDougal and John Latham) in significance to the investigation of Madison Guaranty.[1418]

After Speed read the Borod & Huggins Report, he was "concerned about the hiring of Ms. Heritage by" Rose Law Firm.[1419] On April 4, 1990, Gary Speed, Rick Donovan, and Jim Birch interviewed Patricia Heritage about her Madison Guaranty work.[1420] Speed thought that Heritage's files had served as part of the evidence against Latham and the Henleys.[1421]

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been hired. Smith 2/5/98 GJ at 48-49.

[1415] Borod & Huggins Report, supra note 1158, App. at 61.

[1416] Id.

[1417] Id. at 62.

[1418] Id. at 169. By this point, Latham had pleaded guilty to falsifying Madison Guaranty records and McDougal was under indictment.

[1419] Speed 6/30/95 RTC-OIG Int. at 7-8; see also Hubbell 3/16/95 FDIC-OIG Int. at 11; and Hubbell 4/20/95 RTC-OIG/OIC Int. at 19.

[1420] Rose Law Firm Billing Record (Jun. 20, 1990) (Doc. No. 105-00083613).

[1421] Speed 3/17/98 GJ at 72.

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Speed met with Hubbell on April 4, 1990.[1422] Speed later stated that he and Hubbell told Breslaw about Pat Heritage,[1423] but Breslaw later denied having been told about it.[1424] Breslaw stated that it was not until January 1994 when she learned that Heritage had once worked at Madison and that Gerrish had accused her of editing minutes of Madison board meetings.[1425] Hubbell stated that they did not discuss this matter with Breslaw, although they probably should have talked with her about it.[1426]

iv. Other Conflicts Not Disclosed.

ASD -- On April 13, 1990, Frost attorney Steven W. Quattelbaum deposed former Madison Guaranty president John Latham.[1427] Both Gary Speed and Rick Donovan billed the RTC for attending Latham's deposition.[1428] Quattelbaum questioned Latham about Rick Massey's work for Madison Guaranty before the ASD.[1429] There is no evidence that anyone informed

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[1422] Id. at 29-30.

[1423] Speed 6/30/95 RTC-OIG Statement at 8-9.

[1424] Breslaw 6/8/94 RTC-OIG Statement at 20 (sworn testimony); Breslaw 7/18/95 RTC-OIG Int. at 7.

[1425] Breslaw 6/8/94 RTC-OIG Statement at 20 (sworn testimony); see also Breslaw 7/18/95 RTC-OIG Int. at 7 ("I do not recall anyone from Rose discussing Patricia Heritage with me in any context during the Frost litigation").

[1426] Hubbell 3/16/95 FDIC-OIG Int. at 12; see also Hubbell 4/20/95 RTC-OIG/OIC Int. at 19-20 (Hubbell stated that he did not discuss the matter with Breslaw).

[1427] Latham 4/13/90 Depo. at 2, RTC v. Frost, Case No. LR-C-89-216 (E.D. Ark.) (Doc. Nos. 85-00080961 through 81058).

[1428] Rose Law Billing Records (June 20, 1990) (Doc. No. 264-00020695).

[1429] Latham 4/13/90 Depo. at 93-95, RTC v. Frost, No. LR-C-89-216 (E.D. Ark.) (Doc. Nos. 85-00081053 through 81055). Quattelbaum explained:

I asked [Latham] these questions at the very end of the deposition. I probably

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Breslaw about Quattelbaum's questions to Latham about Rose's ASD work.

Gary Speed's Wife -- During the Frost case, Gary Speed learned that before they were married, his wife had an ownership interest with James McDougal in Madison Guaranty.[1430] Speed informed Hubbell of this, but Hubbell concealed it from April Breslaw.[1431] Speed said that Hubbell told him that he had disclosed Speed's wife's potential conflict to Breslaw.[1432] Hubbell later told the FDIC-OIG that the Rose attorneys had concluded there was no conflict to report.[1433]

On April 4, 1990, when Gary Speed, Rick Donovan, and Jim Birch met with Patricia Heritage to discuss Heritage's prior Madison Guaranty employment,[1434] they also discussed

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> brought this issue up just to worry the Rose Attorneys. I did not consider this to be an important or significant matter. I just wanted the Rose attorneys to know that we were aware of their prior representation so that would be one more thing they would have to be prepared to discuss if it came up in the trial.

Quattelbaum 5/18/95 FDIC-OIG Statement at 1.

[1430] Speed 5/19/94 GJ at 83-88. Speed's wife, Julie Baldridge Speed, had been married to Steve Smith.

[1431] Compare Speed 6/30/95 RTC-OIG Statement at 11-12 ("Hubbell later told me that he had spoken to Ms. Breslaw about it [Mrs. Speed's business relationship with Jim McDougal and Madison Guaranty] and Ms. Breslaw said that it was not a problem"), with Hubbell 2/1/95 Int. at 22 ("SPEED may have mentioned that his wife at the time, JUDY [sic] BALDRIDGE SPEED, worked at MGS&L and that she was on their Board of Directors. BALDRIDGE SPEED held stock in MGS&L for a few months. HUBBELL did not disclose this information to BRESLAW. HUBBELL has not held any discussions of this matter with GARY SPEED since he disclosed the information to HUBBELL"); and Hubbell 3/16/95 FDIC-OIG Int. at 3 ("Baldridge's ownership was prior to the time Frost audited Madison. Since the time frame did not overlap, they decided it was not a conflict of interest. He does not recall discussing the issue with Breslaw when he learned of it but either he, Speed or Donovan could have mentioned it to her"). Donovan did not tell Breslaw about Julie Baldridge Speed. Donovan 1/21/98 GJ at 47.

[1432] Speed 5/19/94 GJ at 87-88.

[1433] Hubbell 3/16/95 FDIC-OIG Int. at 2-3.

[1434] Speed 3/17/98 at 29-33.

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Heritage's work for Precision, and agreed that "Jim [Birch] will cut her out of it."[1435]

Rose member Tim Boe, the lead attorney on Precision, learned from Jim Birch that Jimmie Alford was going to testify in the Frost case.[1436] When Boe learned Alford was involved in the Frost case, Birch and Boe "went to Hubbell and brought this to his attention."[1437] Boe, Birch, and Hubbell "sat and discussed it, the fact that [Boe] had been doing the work for Precision Industries, the corporation, and Jim Birch had also been doing the work for Precision Industries, the corporation."[1438] They concluded that there was not a formal conflict of interest -- "because we did not represent Alford as an individual" -- but Boe, Birch, and Hubbell "all agreed that we would contact and, for purposes of good client relations, tell our respective clients."[1439] As they left the meeting, "Hubbell said that he would take care of it. [Boe] understood that to mean that he would inform the RTC of what the situation was."[1440]

Boe and Birch informed Alford that Rose "would withdraw as counsel representing Precision if that's what they wanted to do."[1441] Boe also offered to set up a conflict screen between Hubbell and the Precision matters, and recommended that Alford consult with outside

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[1435] Id. at 31-32 (the quote "Jim will cut her out of it" is from Speed's handwritten notes of the meeting (Doc. No. RIC-038820)).

[1436] Boe 2/4/98 GJ at 6-7.

[1437] Id. at 6.

[1438] Id.

[1439] Id. at 7.

[1440] Id.

[1441] Id.

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counsel.[1442] Alford chose to continue with Rose.[1443]

Boe encountered Hubbell "days or weeks later."[1444] Boe said, "[T]he subject came up of whether or not he had contacted the RTC. I understood that he had and [Hubbell] represented to me words to the effect that it had been taken care of. And I understood that to refer to our earlier meeting that he would make that contact."[1445]

Hubbell did not tell the RTC that Jimmie Alford was a Frost defendant at the same time he was president and part owner of a Rose client. The first Breslaw heard of Rose's representation of Alford's company was in 1995 when the RTC-OIG interviewed her.[1446] On March 16, 1995, Hubbell told FDIC-OIG investigators that he was very concerned when he learned of the Alford-Precision matter.[1447] He stated that Donovan, Speed, and he discussed what to do about this although they did not mention this to Breslaw.[1448] Hubbell asserted that before they came to a decision as to what to do, the Frost lawsuit settled.[1449] On April 20, 1995, Hubbell

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[1442] Id. at 8.

[1443] Id.

[1444] Id. at 7.

[1445] Id. at 7-8. Jim Birch corroborated Boe's version of events. Birch 3/20/98 Int. at 1. See Speed's handwritten notes of meeting with Patricia Heritage (Apr. 4, 1990) (Doc. Nos. RIC-038818 through 23). Rick Donovan's testimony corroborated Boe's version of events. Donovan 1/21/98 GJ at 64-65.

[1446] Breslaw 7/18/95 RTC-OIG Statement at 9-10.

[1447] Hubbell 3/16/95 FDIC-OIG Int. at 14.

[1448] Id.

[1449] Id.

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repeated a similar story to RTC-OIG investigators.[1450]

POM -- In May 1990, Hubbell concealed yet another conflict from the RTC. On May 4, 1990, Webb Hubbell and the Rose Law Firm filed a patent infringement and anti-trust lawsuit for Seth Ward's company, POM, against Duncan Industries.[1451] Representing Ward's company was a significant potential conflict of interest for Rose because Ward was still a plaintiff in a lawsuit against Rose's client, Madison Guaranty's conservator, the RTC.

Hubbell did not disclose Rose's representation of POM to April Breslaw. Hubbell admitted that the June 28, 1989 letter he drafted to the RTC to detail his relationship with Ward was "artfully crafted" because his letter referred only to Ward individually, omitting reference to Hubbell's work for Ward's company,[1452] even though Hubbell admitted he was POM's lawyer, before, during, and after the letter.[1453] However, in interviews with the FDIC and RTC OIGs, Hubbell asserted that the letter was not crafted to mislead anyone.[1454] In 1994, April Breslaw

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[1450] See Hubbell 4/20/95 RTC-OIG/OIC Int. at 14-15, 21-22.

[1451] See RTC-OIG Records Examination (June 21, 1994) (indicated that RTC-OIG agents Philip L. Sprague and Patrick S. Durkin examined court records for the United States District Court of the Eastern District of Arkansas, Western Division in the case of POM, Inc. v. Duncan Indus. LR-C-90-293 (E.D. Ark.); Ward II 3/30/95 RTC/OIG Int. at 2.

[1452] Hubbell 2/1/95 Int. at 22.

[1453] Id.

[1454] Hubbell 4/20/95 RTC-OIG/OIC Int. at 16 ("HUBBELL said that the wording of the letter was not meant to be narrowly worded or to mislead anyone"); Hubbell 3/16/95 FDIC-OIG Int. at 7 ("He said he did not artfully word the letter to Breslaw, he just put down that he was not and would not represent either Ward in their disputes with Madison. He did not think that he was prohibited from representing the Wards on other matters").

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confirmed for RTC-OIG investigators that she was unaware of Rose's POM work.[1455]

e. McDougal's Criminal Trial and the Frost Matter.

For Rose, Jim McDougal's indictment in 1989 and trial in 1990 "complicated the [Frost] case greatly."[1456] Gary Speed at Rose drafted a memorandum that discussed the indictment,[1457] noting that "[t]he acts alleged by the indictment of McDougal and the Henleys begin with the approval of the purchase by Madison Financial Corporation (MFC) of the Castle Grande Estates property for $600,000 on September 9, 1985 and flow from there."[1458] Speed also observed, "[a]ll the other fraudulent acts alleged occurred in 1986."[1459] The Rose Law Firm had represented Seth Ward and Madison Financial at the October 4, 1985 closing with IDC.

While no one ever deposed McDougal in Frost, McDougal did meet with the attorney for

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[1455] Breslaw 6/8/94 RTC-OIG Int. at 18.

[1456] Donovan 1/6/98 GJ at 83. Donovan also testified of McDougal's indictment:

> I didn't think it made a whole heck of a lot of difference the fact he had been indicted. It was all in the newspapers. The fact that clearly we were not going to be able to say that these insiders were lily-white clean and ran this institution in a fine way -- I mean, that was clear after looking through these files. It was clear after listening to the evidence there. So it didn't make any difference. Our case had been demonstrably hurt by the indictment. And even without the indictment, there was enough shenanigans in the files themselves that I did not feel like that we were going to be able to say, "Here is this fine, upstanding management who were not served right by their auditors."

Id. at 86.

[1457] Memo from Gary N. Speed, Rose Law Firm Attorney, to RTC/Madison Litigation Team (Mar. 28, 1994) (Doc. Nos. 105-00077228 through 77239); Speed 3/17/98 GJ at 57-60.

[1458] Memo from Gary N. Speed, Rose Law Firm Attorney, to RTC/Madison Litigation Team at 3 (Mar. 28, 1994) (Doc. No. 105-00077230).

[1459] Id.

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Frost, Peter Kumpe, who concluded that McDougal would be helpful to Frost's defense.[1460] One of Frost's defenses to the RTC's accounting malpractice claim was that Madison Guaranty's officers and directors were corrupt, and that any losses to Madison Guaranty were the fault of the "crooks running the institution."[1461] According to Rick Donovan, Rose felt that "the other side certainly would" depose McDougal because "they wanted to paint McDougal as the criminal" and "we had nothing to gain and everything to lose by that man being on the witness stand."[1462] Donovan's testimony is supported by Gary Speed: "McDougal was not seen as helpful to the case because McDougal did not like the government, McDougal had lost his savings and loan and his ability to deal, and [Rose] was afraid of anything McDougal might say."[1463] Hubbell billed the RTC for "conferences" with McDougal's criminal defense lawyer Heuer on at least four occasions "re: McDo[u]gal" from July 17, 1990 to September 5, 1990.[1464]

f. Beverly Bassett Schaffer Criticized Rose for its Conflict of Interest in Frost.

In 1990, Rose was considering calling Beverly Bassett Schaffer as a witness.[1465] Hubbell telephoned Bassett Schaffer to advise her that he either had a subpoena or was going to issue a

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[1460] Kumpe 2/3/98 GJ at 4-5.

[1461] Donovan 1/6/98 GJ at 81.

[1462] Id. at 98-99.

[1463] Speed 1/29/98 Int. at 3.

[1464] Rose Law Firm Billing Records (Aug.-Oct. 1990) (Doc. Nos. 105-00083428; 105-00083432; 105-00083435 through 83436; 105-00083411).

[1465] On August 7, 1990, Hubbell billed the RTC for a "telephone conference with B. Bassett." Rose Law Firm Billing Records (Aug. 7, 1990) (Doc. No. 105-00083422). Bassett Schaffer testified that her conversations with Hubbell occurred in "roughly July or August of

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subpoena to her for testimony at trial. According to Bassett Schaffer, in this conversation she

> asked him if he was not aware of that previous representation [Rose's work for Madison Guaranty] and asked him how it was that he could be representing the government now for -- in a lawsuit accusing Frost & Company of malpractice and negligence covering the very same audits that were supplied to us by the Rose Law Firm in 1985 in support of their effort to get the brokerage firm approved and to show us the financial condition of the institution for purposes of the preferred stock offering. And I just expressed my disapproval that I didn't appreciate him putting the State in that position, involving the State in that lawsuit, after their own law firm, whose partner was the governor's wife who represented Madison before the department and now sought to put the State and my office, me possibly, in a bad light in a civil lawsuit to recover for the government from an accounting firm who is their partner, I mean, essentially worked with them presenting what they did to our office. And I just told him I didn't appreciate it, wasn't going to cooperate. And he -- when I asked him about the previous representation and wasn't it true that he had previously represented -- that their firm had, and he didn't answer. And I said he needed to go talk to Rick Massey, and that they had files and that we had files that clearly showed they had done that.[1466]

Bassett Schaffer was "angry with Webb Hubbell," so she called Frost's lawyer, Peter Kumpe, and "told Peter . . . what Webb had done . . . and asked Peter if he was aware that the Rose Law Firm had represented Madison before the [Arkansas Securities] department throughout 1985, and that there were documents and files to that effect, numerous documents that would reflect that at the department."[1467] Kumpe issued a subpoena and obtained the records.[1468] Bassett Schaffer later received a call from a Rose paralegal telling her that the case settled.[1469]

When Hubbell was confronted with Basset Schaffer's claims, he testified:

1990." Bassett Schaffer 11/8/95 GJ at 135.

[1466] Bassett Schaffer 11/8/95 GJ at 131-32.

[1467] Id. at 133.

[1468] Id. at 134.

[1469] Id. at 135.

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> Congressman, as I said before, I don't recall the specifics of that conversation. I know that I talked to Ms. Schaffer about this case because she would be a critical witness in the case. I don't recall the specifics of it, but she's a very fine person and I don't doubt what she said is true.
>
> I think I said that either the documents were provided to me first or that she told me. So if she said she was the first one to tell me, I don't have any reason to doubt that. I just don't have any recollection of that first conversation.[1470]

There is no evidence that Hubbell informed Breslaw or anyone else at the FDIC or the RTC about Beverly Bassett Schaffer's comments to him. Neither Rick Donovan nor Gary Speed learned of her comments to Hubbell about her view of Rose's conflict.[1471]

g. Patricia Heritage Was Deposed Shortly before Frost Settled.

Frost was scheduled for trial on March 25, 1991. The parties reached a tentative settlement agreement by mid-February 1991, which was formalized on April 8, 1991.[1472] Frost agreed to pay the RTC $1.025 million.[1473]

During the time that the parties were negotiating the settlement, Pat Heritage was deposed. On January 24, 1991, counsel for the Frost defendants served a Notice To Take Oral

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[1470] House Banking Comm. Hearing, supra note 997, at 51 (Aug. 10, 1995) (testimony of W. Hubbell) (quoting Bassett Schaffer's Inspector General statement).

[1471] Donovan 1/21/98 GJ at 47-48; Speed 3/17/98 GJ at 35.

[1472] Breslaw 10/23/95 Senate Banking Comm. Depo. at 241-42; Breslaw 6/8/94 RTC-OIG Statement at 13 (sworn testimony); Donovan 1/21/98 GJ at 44-45; Memo from April Breslaw, RTC Attorney, to Gerald Jacobs, Special Counsel to the RTC, and William Roelle, Deputy Executive Director (Feb. 26, 1991).

[1473] FDIC-OIG Report, Alleged Conflicts of Interest by the Rose Law Firm, Case No. IO-94-096), Vol. 1 at 17 (July 28, 1995).

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Deposition naming Pat Heritage, among others.[1474] One week later counsel for the Frost defendants filed a Motion To Compel Discovery or Exclude Testimony.[1475] The Motion To Compel complained that "the RTC is withholding specific loan files pertaining to loans made to Seth Ward."[1476] The Motion To Compel listed no other loan file by name.[1477]

April Breslaw issued an authority to settle memorandum on February 26, 1991,[1478] recommending settlement of Frost for $1.025 million.[1479] The next day defense attorneys deposed Heritage for just over an hour at the Rose Law Firm.[1480] Rick Donovan from Rose attended the deposition on the RTC's behalf.[1481] Heritage testified that she began working at Madison Guaranty in June of 1985 as an "[a]dministrative assistant to John Latham," doing "anything John wanted me to do."[1482] Heritage testified that she eventually became a "collection officer" at

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[1474] Notice to Take Oral Deposition, RTC v. Frost, No. LR-89-216 (E.D. Ark. Jan. 24, 1991) (Doc. Nos. CT-00000795 through 796).

[1475] Motion to Compel Discovery or, in the Alternative, to Exclude Testimony, RTC v. Frost, No. LR-89-216 (E.D. Ark. Jan. 31, 1991) (Doc. Nos. 85-00094672 through 94674).

[1476] Statement in Support of Motion to Compel Discovery or Exclude Testimony, RTC v. Frost, No. LR-89-216 (E.D. Ark. Jan. 31, 1991) (Doc. Nos. 85-00094684 through 94687).

[1477] Motion to Compel Discovery or, in the Alternative, to Exclude Testimony, RTC v. Frost, No. LR-89-216 (E.D. Ark. Jan. 31, 1991) (Doc. Nos. 85-00094672 through 94674); see Kumpe 2/3/98 GJ at 10 ("I believe that there were other files that were on that [expert witness bad loan] list, but certainly Seth Ward was the only one identified by name").

[1478] Memo from April Breslaw, RTC Attorney, to Gerald Jacobs, Special Counsel to the RTC, and William Roelle, Deputy Executive Director (Feb. 26, 1991).

[1479] Id. at 1.

[1480] Heritage 2/27/91 Depo. at 1, 39, RTC v. Frost, No. LR-89-216 (E.D. Ark.) (Doc. Nos. 557-00003348, 3386).

[1481] Rose Law Firm Billing Records (Aug. 21, 1990) (Doc. No. 105-00083441).

[1482] Heritage 2/27/91 Depo. at 6-7, RTC v. Frost, No. LR-89-216 (E.D. Ark.) (Doc. Nos.

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Madison.[1483] In that capacity, "there were certain people [she] was not allowed to send letters to, certain people [she] was not allowed to call."[1484] "I couldn't send letters to any of the Henleys, McDougals, friends of the McDougals," Heritage explained. These "friends and relatives"[1485] included Seth Ward.[1486]

Heritage left Madison Guaranty in June 1987, graduated from law school in 1989, and became an attorney at Rose.[1487] Heritage testified she did no work on Frost while at Rose.[1488] Heritage also said she agreed with "most of" the content of the Borod & Huggins Report.[1489] Heritage explained that she prepared Madison Financial board minutes at Latham's direction even though the meetings had not occurred.[1490] "John had them -- had them prepared so that they would be -- there would be a written record of the [Madison Financial]'s business transactions for the examiners to review," Heritage testified.[1491]

Heritage explained that for Madison Guaranty financial real estate project loans Madison

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557-00003353-54).

[1483] Id. at 18 (Doc. No. 557-00003365).

[1484] Id.

[1485] Id.

[1486] Id. at 27 (Doc. No. 557-00003374).

[1487] Id. at 4, 5, 7, 27 (Doc. Nos. 557-00003351 through 3352, 3354, 3374).

[1488] Id. at 29 (Doc. No. 557-00003376).

[1489] Id. at 12 (Doc. No. 557-00003359).

[1490] Id. at 12-13 (Doc. Nos. 557-00003359 through 60). Heritage also said of Don Denton that, "I think Don had a good background and knew what he was doing, yes." Id. at 28 (Doc. No. 557-00003375).

[1491] Id. at 14 (Doc. No. 557-00003361).

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Financial used appraiser Robert Palmer who "never went out and looked at any of the properties."[1492] "He just, you know, sat in his office and had his secretary type up an appraisal," Heritage said.[1493] "[A]nd whatever value -- I mean, it was common knowledge, I think, that Robert was an appraiser that you could say, 'I need something to appraise at $80,000,' and he would appraise it at $80,000."[1494] No one at Rose told Breslaw about the Heritage deposition.[1495]

Shortly afterwards, the Rose firm settled the Frost case for $1,025,000.[1496] Rose obtained significant additional work from the RTC after the case settled.[1497]

[1492] Id. at 31-32 (Doc. No. 557-00003378 through 79).

[1493] Id. at 31.

[1494] Id. In December 1994, Palmer pleaded guilty to one felony count of conspiracy under 18 U.S.C. § 371 relating to his preparing backdated appraisals for Madison Guaranty. United States v. Palmer, No. LR-CR-94-240 (E.D. Ark.).

[1495] Breslaw 2/23/95 RTC-OIG Int. at 4; Speed 6/30/95 RTC-OIG Statement at 9-10. Breslaw did have access to the Borod & Huggins Report during 1989, and that report discussed Heritage's work at Madison Guaranty. See Hubbell 4/20/95 RTC-OIG/OIC Int. at 19-21 (discussing the Pat Heritage matter).

[1496] FDIC-OIG Report, Alleged Conflicts of Interest by the Rose Law Firm, Case No. I0-94-096, Vol. 1 at 17 (July 28, 1995).

[1497] According to the RTC's 1995 report on Rose conflicts of interest, Rose represented 17 institutions, including Madison Guaranty, in RTC matters, and failed to disclose actual or potential conflicts of interest for 7 of those institutions. RTC-OIG Report, Investigation Concerning Rose Law Firm, Case No. WA-94-0016, at I-3 (Aug. 3, 1995). In addition, Rose actually represented a party in a matter adverse to the RTC. Id. In addition to the actual or potential conflicts of interest involving Madison Guaranty, Rose also failed to disclose actual or potential conflicts of interest regarding other institutions, including the following:

Home Federal Savings and Loan Association: In August 1991, the RTC engaged Rose to analyze and bring actions against former directors and officers for their parts in the failure of Home Federal. RTC-OIG Report, Investigation Concerning Rose Law Firm, Case No. WA-94-0016, at I-19 (Aug. 3, 1995). On June 14, 1991, the RTC sent a list of potential conflicts regarding Home Federal to Rose; that list included Jerry Grisby, a former Chairman of the Board and former Director of Home Federal. Id. Rose did not disclose that Grisby had been a Rose

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client -- the firm had represented him in two separate matters involving financial institutions. Id. The RTC paid Rose $4,965 for its representation regarding Home Federal. Id. In 1995, Hubbell told the RTC that the conflicts certification was incorrect. He also stated that he did not sign the document, but had authorized his signature to be put on it. Hubbell 4/20/95 RTC-OIG Int. at 4.

Independence Federal Savings and Loan Association: Independence Federal entered conservatorship in February 1989, and the RTC assumed responsibility for that conservatorship after the enactment of FIRREA in August 1989. RTC-OIG Report, Investigation Concerning Rose Law Firm, Case No. WA-94-0016, at I-20 (Aug. 3, 1995). In 1990, Rose represented Gus Blass III in his settlement of a defaulted $4 million loan from Independence Federal. Id. The RTC established a loss due to this loan of more than $2.3 million. Id. In July 1991, in an effort to solicit business regarding Independence Federal, Rose certified that it had no conflicts regarding the institution, although Blass's name was on the list of potential conflicts provided by the RTC. Id. The RTC hired Rose and in February 1992, Rose filed suit against 10 individuals involved in Independence Federal's failure. Id. The complaint itself identified the loan to Blass as one having caused losses to Independence Federal. Id. at 20-21. Independence Federal's insurer ultimately settled by paying the RTC $500,000, and the RTC paid Rose $145,716 for its services in the matter. Id. Hubbell later conceded that Rose should have informed the RTC about its prior representations. Hubbell 4/20/95 RTC-OIG Int. at 6.

Western Gulf Savings and Loan Association: In January 1989, Western Gulf sued Commercial Bank & Trust Company. Two months later, in March 1989, Western Gulf entered conservatorship, and in August 1989, the RTC took over as its conservator, thus becoming its receiver when the institution failed and went into receivership in November 1990. RTC-OIG Report, Investigation Concerning Rose Law Firm, Case No. WA-94-0016, at I-21 (Aug. 3, 1995). In October 1989, Rose became co-counsel with another firm representing Commercial Bank in its litigation against Western Gulf. Id. Herb Rule from Rose represented Commercial Bank, and argued on Commercial Bank's behalf before the Court of Appeals in September 1991. Id. The RTC learned of Rose's representation of Commercial Bank in November 1991, and Rule took the position that until Western Gulf entered receivership, Rose neither had no conflict or duty of disclosure. Id. at I-21 to I-22. On the other hand, in 1995, Hubbell stated to the RTC that there had been a conflict that should have been disclosed to the RTC. Hubbell 4/20/95 RTC-OIG Int. at 3.

First Federal Savings and Loan Association: In May 1991, the RTC hired Rose to represent its interest in First Federal by bringing suit against the institution's former directors and officers. RTC-OIG Report, Investigation Concerning Rose Law Firm, Case No. WA-94-0016, at I-22 (Aug. 3, 1995). Rose did not disclose two different potential conflicts of interest: In 1988, Rose had represented parties adverse to First Federal in two separate law suits, but in May 1991, Rose did not disclose this past representation to the RTC. Id. Interestingly, in 1989, both of

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D. 1992: Governor Clinton's Presidential Campaign.

Chapter 1 described the relationship between the Rose Law Firm and Madison Guaranty. The earlier sections of this Chapter described how Hubbell first concealed this connection from the FDIC when he was hired to represent the FDIC and, later, concealed this connection from FDIC and RTC investigators when he was asked about it.

The scrutiny of the connection between the Rose Law Firm and Madison Guaranty arose as a result of Governor Clinton's successful campaign for President in 1992. Governor Clinton's candidacy thrust both him and his family into the public spotlight. This section details the initial

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these potential conflicts had been disclosed to the FDIC when the FDIC was First Federal's conservator, and Rose was soliciting FDIC work. Id. The RTC paid Rose more than $135,000 for its work regarding First Federal. Id.

Savers Savings and Loan Association: Savers was an institution in RTC conservatorship. Beginning in October 1990, Rose represented Fairfield Communities in its Chapter 11 bankruptcy proceeding. Savers was a creditor of Fairfield Communities. RTC-OIG Report, Investigation Concerning Rose Law Firm, Case No. WA-94-0016, at I-23 (Aug. 3, 1995). Rose did not disclose its work for Fairfield Communities to the RTC or seek a waiver from the RTC for any potential conflict. Id. During the RTC's investigation, Rose's counsel told the RTC that Rose did not perceive its representation of Fairfield Communities as adverse to the RTC. Id. While Rose was representing Fairfield Communities, it also represented Savers and the RTC in a separate bankruptcy proceeding. Id.

Arkansas Federal Savings Bank: In May 1991, the RTC hired Rose to analyze whether it had viable claims against the officers and directors of Arkansas Federal. RTC-OIG Report, Investigation Concerning Rose Law Firm, Case No. WA-94-0016, at I-24 (Aug. 3, 1995). Rose certified that it had no conflicts in the representation, but two of the names on the list of potential conflicts that the RTC sent to Rose were in fact Rose clients. Id. Moreover, during the time when Rose represented the RTC's interest in Arkansas Federal, Herb Rule represented a debtor of the institution in an attempted work out. Id. Rose earned almost $25,000 in fees from the RTC for its work on the Arkansas Federal matter. Id. In 1995, Hubbell conceded that Rose should have informed the RTC about its prior representation of parties in potential conflict. Hubbell 4/20/95 RTC-OIG Int. at 5.

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reaction of Hubbell, Vince Foster, and Mrs. Clinton to that spotlight when it came to focus on the Rose Law Firm.

1. The Campaign Reacts to Media Scrutiny Over Hillary Rodham Clinton's Representation of Madison Guaranty.

a. February 11, 1992.

On February 11, 1992, New York Times investigative reporter Jeff Gerth went to the Arkansas Securities Department ("ASD") to review its public files of Madison Guaranty Savings and Loan and Madison Financial Corporation records. Gerth was able to review and make copies of the records, and Securities Commissioner Joe Madden approved the request.[1498]

Madden also reviewed the records Gerth pulled and came across several letters back and forth between the Securities Department and the Rose Law Firm, including some referring to Hillary Rodham Clinton.[1499] Madden called the Governor's office because of ramifications for the presidential campaign.[1500] Madden told Betsey Wright at the Clinton campaign that a reporter from the New York Times was there looking at Madison Guaranty files and that he was sure the reporter would be interested in a letter from Arkansas Securities Commissioner Beverly Bassett

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[1498] Arkansas Securities Department Review of Public Files Log Sheet (Feb. 11, 1992) (Doc. No. LR-00000007); see Madden 11/4/97 GJ at 23. Madden was appointed Arkansas Securities Commissioner by Governor Clinton and served in that capacity from January 4, 1991 to September 9, 1996. Id. at 5-6, 8.

[1499] Madden 11/4/97 GJ at 27-28. Madden recalled an opinion letter from the Rose Law firm that referenced contacting Hillary Rodham Clinton or Rick Massey, and a letter from Beverly Bassett to Mrs. Clinton addressed "Dear Hillary." Id. at 28.

[1500] Id. at 26-27.

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to Mrs. Clinton, addressing her, "Dear Hillary."[1501] Madden received a return call from campaign staffer Loretta Lynch, who asked to look at the records reviewed by the reporter and copies were given to her.[1502]

b. Gathering Information at the Rose Law Firm.

The Clinton campaign, assisted by Vince Foster and Webb Hubbell at Rose,[1503] began gathering information on Mrs. Clinton's Madison work. On February 12, 1992, the day after Gerth obtained records at the Securities Department and the campaign was notified, the accounting office at the Rose Law Firm printed a copy of the "Client Billing & Payment History" relating to Hillary Clinton's Madison Guaranty work.[1504] Hubbell and Foster retrieved the Madison accounting and client files from the firm's remote storage facility.[1505] On February 14, 1992, Rose records management employee Mary Russell, checked out the Madison Guaranty

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[1501] Id. at 28-30.

[1502] Madden 11/4/97 GJ at 30.

[1503] Webb Hubbell and Vince Foster served as the liaisons between the law firm and the campaign. Hubbell 12/19/95 GJ at 81-82. On at least one matter, Bill Kennedy was the only other Rose Law Firm employee who acted as a liaison between the firm and the campaign. Id. at 82. Hubbell was also charged with answering press inquiries that were directed to the firm instead of the campaign. Id.

[1504] Rose Law Firm Client Billing and Payment History (runoff date Feb. 12, 1992) (Doc. Nos. DEK014936 through 40). Ronald Clark, the Rose chief operating officer testified that these billing records had a run date of February12, 1992 at 8:41 a.m., which meant that the report was printed off the system on that date. Clark 12/2/97 GJ at 4, 93. Clark says anyone at the firm could have asked the accounting department to print out a billing and payment history for any client. Id.

[1505] Hubbell 12/19/95 GJ at 91-92.

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accounting records for 1985 to 1987.[1506] These included files labeled: "'85 Madison Guaranty," "'86 (M's)," and "87 (M's) Paid Client."[1507] On February 21, 1992, Russell also checked out records relating to Madison Bank and the Bank of Kingston from 1981 and 1982.[1508] These included "81 & 82 B's and K's," "Madison Bank" and "Bank of Kingston."[1509] These two sets of files involved only Madison-related work and filled 1-2 bankers boxes of 3-4 feet in length.[1510] The files included the bills and statements for legal services that had been sent to Madison Guaranty.[1511]

Hubbell admitted that he reviewed the Madison Guaranty billing records during the 1992 campaign in testimony to the Senate Banking Committee. He also admitted reviewing Hillary Clinton's bills for multiple telephone conferences with Seth Ward on the IDC matter --knowledge

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[1506] Rose Law Firm Accounting Department Check Out Logs (Feb. 1992) (Doc. Nos. 105-00054217, 54214). Russell 4/16/96 GJ at 4-6, 23-24.

[1507] Rose Law Firm Accounting Department Check Out Log (Feb. 1992) (Doc. No. 105-00054214).

[1508] Id. (Doc. No. 105-00054214 through 54215).

[1509] Id.

[1510] Hubbell 12/19/95 GJ at 92-93.

[1511] Id. at 94-95. In the subsequent prosecution of Webb Hubbell for concealing the Rose Law Firm conflicts from the FDIC and RTC, it proved significant that he reviewed the Rose Law Firm's Madison Guaranty billing records during the 1992 campaign and that he actively participated in providing information to the campaign and to the national media about the Rose-Madison Guaranty relationship. House Banking Comm. Hearing, supra note 997, at 54-55 (Aug. 10, 1995) (testimony of W. Hubbell) ("I was involved in gathering information, disclosing what information [about Mrs. Clinton's representation of Madison] we could to the campaign. . . . I had been designated by the firm ... as the spokesperson for the firm with regard to campaign issues"). Shortly thereafter, in late 1993 and early 1994, Hubbell made statements to FDIC attorneys about his knowledge (or lack of knowledge) regarding the relationship of Rose and Madison Guaranty prior to the Frost case.

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Hubbell later failed to disclose to the FDIC Legal Division.[1512]

Hubbell also later acknowledged that in early 1993 when he left Little Rock for Washington, he and Vince Foster took Rose Law Firm files from Rose to Washington.[1513] He said he took the files "to maintain their integrity."[1514] Hubbell testified that he never disclosed the existence of the Rose files to the FDIC Legal Division Investigators.[1515]

c. Early Campaign Investigation -- February 11 to 19.

Clinton campaign staffer Loretta Lynch compiled background information in a memorandum beginning on February 18, 1992.[1516] This memorandum included information that people told her about Jim McDougal, the Clintons' investment in Whitewater Development, the Rose Law Firm's Madison Guaranty representation, and tasks that needed to be completed.[1517] The memorandum noted that Gerth contacted Webb Hubbell on February 18, 1992, focusing on four issues:[1518]

[1512] Senate Whitewater Comm. Hearing, supra note 147, at 20-21 (Feb. 7, 1996) (testimony of W. Hubbell). This testimony relates to Hubbell's interview on January 11, 1994 with Jack Smith and John Downing, which we discuss below

[1513] Id. at 136-37 (testimony of W. Hubbell).

[1514] Id. at 137 (testimony of W. Hubbell). "I did not consider them my property, but I took them to Washington," Hubbell later admitted. Id. at 140 (testimony of W. Hubbell).

[1515] Id. at 141-46 (testimony of W. Hubbell).

[1516] Lynch 2/1/96 GJ at 7-8, 12; Draft memo from Loretta Lynch, Clinton Campaign staff to David Wilhelm and Bruce Reed, Clinton Campaign staff (Feb. 18, 1992) (Doc. Nos. 263-00000348 through 60). Lynch testified that this document spanned from February 18 until February 22, 1992. Lynch 2/1/96 GJ at 13.

[1517] Draft memo from Loretta Lynch, Clinton Campaign staff, to David Wilhelm and Bruce Reed, Clinton Campaign staff (Feb. 18, 1992) (Doc. Nos. 263-00000348 through 60).

[1518] Memo from Loretta Lynch, Clinton Campaign staff, to David Wilhelm and Bruce

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> Gerth called Webb 2/18: focus on four issues: (1) Rose firm represented Madison -- (HRC brought it to the firm); (2) any firm policy re: HRC doing work where she had direct contact with the state (file indicates that HRC had some minimal contact with B Bassett) (3) representation of the RTC after they took over Madison (disclosed and no problem) (4) terms of the settlement with the accounting firm that they sued and Webb told him that they were confidential. Gerth had a lot of information when he talked to Webb -- he also mentioned the NYT reporter had been down here for a few weeks on the Madison Guaranty issue.[1519]

Lynch reviewed all the documents Gerth saw at the ASD.[1520] Among the papers, Lynch noticed the Rose letter to Beverly Bassett, and Bassett's "Dear Hillary" reply.[1521] This caused Lynch to examine the extent of work performed by both Mrs. Clinton and Rick Massey for Madison Guaranty.[1522] By February 20, 1992, Lynch spoke with Beverly Bassett Schaffer.[1523] According to Lynch's notes, Bassett Schaffer told her:

> In 1985, after BB was Commissioner, the Rose Law Firm's involvement was through Rick Massey -- to go raise capital -- had been told repeatedly that they were not meeting their net worth requirements by the Federal Home Loan Bank Board. . . . Letter was written by "The Rose Law Firm" with a contact line of Rick Massey or HRC.[1524]

Additionally, Bassett Schaffer explained that there had been at least one contact between Mrs.

Reed, Clinton Campaign staff (Feb. 18, 1992) (Doc. No. 263-00000352).

[1519] Id.

[1520] Lynch 2/1/96 GJ at 15.

[1521] Id. at 16-17.

[1522] Id.

[1523] Schaffer 11/8/95 GJ at 139; see Memo from Loretta Lynch, Clinton Campaign staff member, to David Wilhelm and Bruce Reed (Feb. 18, 1992) (Doc. No. 263-00000355).

[1524] Memo from Loretta Lynch, Clinton Campaign staff member, to David Wilhelm and Bruce Reed (Feb. 18, 1992) (Doc. No. 263-00000355).

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Clinton and herself on Madison Guaranty-related issues.[1525]

d. Susan Thomases' Efforts -- February 20 to 23.

Susan Thomases, a long time friend of the Clintons, was asked by the campaign to respond to Jeff Gerth's questions about the Clintons' Whitewater investment and Mrs. Clinton's representation of Madison Guaranty.[1526] Thomases called Gerth to determine what he was investigating.[1527] Gerth inquired how the relationship between Rose and Madison Guaranty "came about."[1528] Thomases's annotated notes of this conversation include Mrs. Clinton's responses.[1529] Mrs. Clinton said Rick Massey, then a Rose associate and friend of Madison Guaranty President John Latham, brought the business to the firm.[1530]

On February 21, 1992, Thomases told Lynch what she had learned from Mrs. Clinton. Mrs. Clinton said she was the billing partner because "McDougal insisted that she be the contact person."[1531] Lynch's notes reflect that Thomases told her that "apparently it was Latham coming

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[1525] Lynch 2/1/96 GJ at 17; see also Schaffer 11/8/95 GJ at 139. Before February 25, 1992, Bassett Schaffer had already spoken with Lynch two or three times. No one in the campaign ever told Bassett Schaffer about the connection between the Rose Law Firm's representation of Madison and the Whitewater development issues Gerth was looking at. Schaffer 11/8/95 GJ at 167-68.

[1526] Thomases 2/29/96 GJ at 22-23.

[1527] Id. at 34.

[1528] Id.

[1529] Id. at 35, 37; Thomases's handwritten notes (Feb. 20, 1992) (Doc. No. 790-00000018).

[1530] Thomases 2/29/96 GJ at 36; Thomases's handwritten notes (Feb. 20, 1992) (Doc. No. 790-00000018) ("HC: Latham who work for MacDougald [sic]. Rick Massey was friend of Latham. RM did the contact and sec[urity] lawyer").

[1531] Lynch GJ 2/1/96 at18; Memo by Loretta Lynch (undated) (Doc. No. 263-00000357).

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because of Rick Massey . . . . According to HRC -- Latham asked Massey to represent Latham. McDougal said only if HRC were involved. Talk to Rick Massey about this. Partner at Rose Law Firm."[1532]

Lynch and Thomases recognized that the Rose billing records would provide additional details on Mrs. Clinton's activities, which Lynch considered a "hot topic."[1533] She enlisted Thomases's help in "pressing" Hubbell to do a more thorough review of Rose's records.[1534]

e. Webb Hubbell -- February 24.

Hubbell focused on Rose's securities representation for Madison Guaranty.[1535] He came across an opinion letter addressed to Beverly Bassett with a corporate signature of the "Rose Law Firm."[1536] There was no indication of who signed the letter, and Hubbell later stated that Rick Massey told him he did not think he had signed it.[1537] Hubbell also saw the reply letter of approval from Beverly Bassett Schaffer to Mrs. Clinton.[1538] Hubbell said he reviewed the client bills and noticed a "time entry" for Mrs. Clinton for a quarter of an hour call with Ms. Bassett

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[1532] Draft memo by Loretta Lynch, Clinton Campaign staff, to David Wilhelm and Bruce Reed, Clinton Campaign staff (Feb. 18, 1992) (Doc. No. 263-00000357, 359).

[1533] Lynch GJ 2/1/96 at 16.

[1534] Id. at 19-20; see Lynch memo (undated) (Doc. No. 263-00000357) ("We need to confirm that Massey did 95% of the work. Identify correspo[n]dence that went out over HRC's signature. Get all correspondence from the file. Does HRC have a chron file of her own?").

[1535] Hubbell 12/19/95 GJ at 96.

[1536] Id.

[1537] Id. As discussed in Chapter 1 of this Part, in fact Massey had signed the letter.

[1538] Id.

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and Massey on the subject.[1539]

Thomases spoke with Hubbell on February 24, 1992.[1540] According to her notes, Hubbell discussed the following:

> 1. preferred stock offering. 4/85, summer 1985. 2. Broker dealer. Massey had relationship w/ Latham and HC had relationship w/ MacD [sic]. Rick will say he had r[e]l[ationship] w/ Latham and had a lot to do w/ getting the client in. She did all the billing. Acc[ording] to time rec[ords], HC had numerous conf[erences] w/ Latham, Massey and McDougall [sic] on both transactions. She reviewed some doc. She had one t[elephone] c[onference] in 4/85 at beginning of the deal w/ Bev. Neither deal went through. Broker dealer was opposed by staff but approved by Bev under certain conditions which they never met. Preferred stock?! But for Massey it would not have been there. But HC was billing partner and attended conferences. He had major role ____ hrs vs HC's ____ hrs.[1541]

Thomases's notes say "acc to time rec" -- reflecting Thomases's understanding that Hubbell was relying on time records for this information.[1542] Thomases, however, later said she was not sure whether Hubbell had the records in his possession at the time of their conversation, or whether his comments were based upon an earlier review of them.[1543]

Lynch went to the Rose Firm on February 24, 1992, to discuss the Madison files and what

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[1539] Id. at 93-97. In an OIC interview, Hubbell recalled the additional detail that his own investigation had established that the call came from Bassett to Massey and was transferred to Massey as he was sitting in Mrs. Clinton's office. Hubbell 2/1/95 Int. at 7.

[1540] Thomases 2/29/96 GJ at 43; Thomases's handwritten notes (Feb. 20, 1992) (Doc. No. 790-00000020).

[1541] Thomases's handwritten notes (Feb. 20, 1992) (Doc. No. 790-00000020).

[1542] Thomases 2/29/96 GJ at 46-47; Thomases's handwritten notes (Feb. 20, 1992) (Doc. No. 790-00000020).

[1543] Senate Whitewater Comm. Hearing, supra note 147, at 53 (Dec. 18, 1995) (testimony of S. Thomases).

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work the Rose Firm had done for Madison Guaranty with Hubbell.[1544] Lynch said, "I was very specific the week before that, that because I had been given a lot of different answers, I wanted him to go check those billing records and the files."[1545] Hubbell told Lynch he had checked the billing records.[1546]

Hubbell recounted for her what Rose had done for Madison Guaranty and Madison Bank, starting with the Bank of Kingston breach of contract dispute.[1547] As for representing Madison Guaranty before the Securities Department, Hubbell told Lynch that Mrs. Clinton was the billing attorney and that Rick Massey had a relationship with John Latham.[1548] Lynch's notes reflect that Hubbell also told her that: "20% of HRC was allocated to McDougal. - 10 - 15% of total # of hrs in matter from HRC. 200 hrs. total -- she had conversations with state employees according to time records - at least 1 conversations with BB - April of 1985 - conversation occurred."[1549] Lynch concluded from this that the campaign could not claim that Mrs. Clinton performed no work for Madison Guaranty.[1550]

[1544] Lynch 2/1/96 GJ at 23.

[1545] Id. at 73-74.

[1546] Id. at 73.

[1547] Lynch 2/1/96 GJ at 23-24; Loretta Lynch handwritten notes (Feb. 24, 1992) (Doc. No. 263-00000711).

[1548] Lynch 2/1/96 GJ at 24; Loretta Lynch handwritten notes (Feb.24, 1992) (Doc. No. 263-00000711).

[1549] Loretta Lynch handwritten notes (Feb. 24, 1992) (Doc. No. 263-00000711). Lynch 2/1/96 GJ at 24-25 (Lynch interpreted her notes to reflect that, "Webb then told me that she, meaning Hillary, had conversations with state employees, according to the time records, at least one conversation with Beverly Bassett").

[1550] Lynch 2/1/96 GJ at 25-26.

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Hubbell also told her about matters regarding Madison Guaranty involving a subscription agreement and a broker/dealer license, neither of which were accomplished.[1551] Lynch said Hubbell reviewed other matters Rose did for Madison Guaranty that were not before the Securities Department.[1552] According to Lynch's notes, one "involved [an] acquisition of [a] large tract of land toward Pine Bluff - Industrial Development Corporation property."[1553] The next matter involved Susan McDougal's interior decorating. According to Lynch, at that point she thought Susan McDougal had a firm.[1554]

The last matter Hubbell discussed with Lynch was Rose's advice to Madison Guaranty about participation with Savers' Loans, which Lynch thought was a bank or financial

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[1551] Id. at 26. Loretta Lynch handwritten notes (Feb. 24, 1992) (Doc. No. 262-00000712). In conjunction with the "subscription agreement" entry in her notes, Lynch wrote, "Fulbright Trust was lined up to buy." Id. As discussed elsewhere, McDougal had his former employer, and sometimes investor, Senator Fulbright lined up to buy preferred stock of Madison Guaranty. There is no mention of Senator Fulbright in the Rose Law Firm billing records, meaning Hubbell must have received that information from another file or person.

[1552] Lynch 2/1/96 GJ at 26-27; Loretta Lynch handwritten notes (Feb. 24, 1992) (Doc. No. 263-00000712).

[1553] Loretta Lynch handwritten notes (Feb. 24, 1992) (Doc. No. 263-00000712); Lynch 2/1/96 at 27.

[1554] Lynch 2/1/96 GJ at 27. Loretta Lynch handwritten notes (Feb. 24, 1992) (Doc. No. 263-00000712). The actual entry in the note reads: "also involved w/ conversations re: Susan's interior decorating." The only entry on the Rose Law Firm billing records of Madison Guaranty mentioning Susan McDougal was for a one hour entry for Mrs. Clinton on July 18, 1985 recorded under Matter 2 - Limited Partnership which reads: "Telephone conference with R. Massey (2); Telephone conference with S. McDougal (2); Review Memo." What Hubbell told Lynch indicates that in addition to looking at the billing records Hubbell had information either from files or talking with one or more other persons. Rose Law Firm Billing Record (July 18, 1985) (Doc. No. DEK014983).

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institution.[1555] She and Hubbell also discussed Whitewater Development issues.[1556] Lynch's notes reflect that Hubbell told her: McDougal used to say that state offices were located in his S&L building; a federal examination report criticized some of Madison Guaranty's loans; the Frost accountants' clear opinion from 1985 and 1986 were the certified financials given to the Securities Department and regulators; suit against Frost for malpractice relating to those opinions was filed in 1987 or 1988; and in 1989, while Rose was representing Madison Guaranty for the RTC, Rose settled the case against Frost.[1557]

f. Beverly Bassett Schaffer -- February 25 to 28.

Jeff Gerth called Beverly Bassett Schaffer, asking about Rose's representation of Madison Guaranty before the ASD, and whether Jim McDougal influenced her appointment as Arkansas Securities Commissioner.[1558] Bassett Schaffer called Charles Handley, still employed at the ASD.[1559] Handley confirmed that a reporter from the New York Times had made copies of documents from the Madison Guaranty files.[1560] She received copies of the documents Gerth had

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[1555] Lynch 2/1/96 GJ at 27; Loretta Lynch handwritten notes (Feb. 24, 1992) (Doc. No. 263-00000712).

[1556] Lynch 2/1/96 GJ at 27-29; Loretta Lynch handwritten notes (Feb. 24, 1992) (Doc. No. 263-00000712 through 713).

[1557] Loretta Lynch handwritten notes (Feb. 24, 1992) (Doc. No. 263-00000713 to 714).

[1558] Memo from Beverly Bassett Schaffer to Jeff G[e]rth at 1-3 (Feb. 25, 1992) (Doc. Nos. 65-00000066 through 78); Schaffer 11/8/95 GJ at 137. Governor Clinton appointed Bassett Schaffer as the Arkansas Securities Commissioner in January 1985. Id. at 45. She held that position until she resigned in January 1991. Id. at 6-7.

[1559] Schaffer 11/8/95 GJ at 137.

[1560] Id.

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copied.[1561]

Bassett Schaffer wrote two separate memoranda to Gerth, one on February 25, 1992,[1562] and, following a second conversation with Gerth on February 26, 1992, another one on February 28, 1992,[1563] explaining her appointment and the actions taken by the Securities Department.[1564] Bassett Schaffer denied that McDougal influenced her appointment.[1565] She stated that approval for Madison Guaranty to issue preferred stock was based on what she still believed to be a correct interpretation of the law.[1566] As for the request of Madison Guaranty to engage in brokerage services, she stated that the Securities Department conditioned approval on Madison Guaranty's compliance with its net worth requirement.[1567] Because Madison Guaranty could not raise sufficient capital within the prescribed time frame, they never engaged in brokerage activities.[1568] Bassett Schaffer denied, "the involvement of the Rose Law Firm in these matters

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[1561] Id. at 137-38.

[1562] Memo from Beverly Bassett Schaffer to Jeff G[e]rth at 1-3 (Feb. 25, 1992) (Doc. Nos. 65-00000066 through 78).

[1563] Memo from Beverly Bassett Schaffer to Jeff G[e]rth (Feb. 25, 1992) (Doc. Nos. 65-00000079 through 83).

[1564] Schaffer 11/8/95 GJ at 137-38, 140, 144. She gave copies of her memos to the Clinton campaign, but did not receive any campaign assistance in preparing them.

[1565] Memo from Beverly Bassett Schaffer to Jeff G[e]rth at 3 (Feb. 25, 1992) (Doc. No. 65-00000068). "I do not believe Jim McDougal, a man I have never met, had anything to do with my appointment." Id.

[1566] Memo from Beverly Bassett Schaffer to Jeff G[e]rth at 5-6 (Feb. 25, 1992) (Doc. No. 65-00000070 through 71).

[1567] Id. at 6-7 (Doc. No. 65-00000071 through 72).

[1568] Id. at 8 (Doc. No. 65-00000073).

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influenced the Department's decisions in any way."[1569] She did not describe her contacts with Mrs. Clinton or the Rose Law Firm.[1570] She denied knowing that Madison Guaranty was insolvent when the stock offering was approved.[1571]

g. Other Campaign Activities Prior to Publication.

The campaign's knowledge of Mrs. Clinton's work on Madison Guaranty's preferred stock was summarized in a March 1, 1992 memorandum Lynch prepared for Jim Hamilton, Mickey Kantor, Jim Lyons, Kevin O'Keefe, and Susan Thomases.[1572] The memorandum chronicled Rose's representation of Madison Guaranty, the requests to the Securities Department, and their subsequent decision making process, and Beverly Bassett's qualifications as Securities Commissioner.[1573] The memorandum included: "4/85 John Latham, Madison's CEO and friend of Rick Massey's, Rose Law Firm's securities lawyer, talks with Rick about Securities

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[1569] Id.

[1570] Bassett Schaffer told Loretta Lynch that both Mrs. Clinton and Rick Massey represented Madison Guaranty. Schaffer 11/8/95 GJ at 168. Bassett Schaffer believed then that Madison was Mrs. Clinton's client, not Massey's client. Id. at 170.

[1571] Memo from Beverly Bassett Schaffer to Jeff G[e]rth (Feb. 28, 1992) (Doc. No. 65-00000079 through 83).

[1572] Memo from Loretta Lynch, Clinton Campaign staff, to Jim Hamilton, Mickey Kantor, Jim Lyons, Kevin O'Keefe, Susan Thomas[e]s (Mar. 1, 1992) (Doc. Nos. 263-00000048 through 50). Lynch sent a substantially identical chronology to Mrs. Clinton, Eli Segal, and Jim Blair on March 20 (Doc. Nos. DEK 009885 through 88).

[1573] Memo from Loretta Lynch, Clinton Campaign staff member, to Jim Hamilton, Mickey Kantor, Jim Lyons, Kevin O'Keefe, Susan Thomas[e]s at 1 (Mar. 1, 1992) (Doc. No. 263-00000048). The information concerning Bassett appears to be taken from her previous memos to Jeff Gerth. Memo from Beverly Bassett Schaffer to Jeff Gerth (Feb. 28, 1992) (Doc. No. 65-00000079 through 83).

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representation. Madison hires the Rose Law Firm . . . (as per RM recollection)."[1574] The chronology included dates for the firm's opinion letter to the Securities Department on the preferred stock, the Department's internal memos, and the letter from Bassett to Mrs. Clinton agreeing with the opinion letter.[1575]

On March 5, 1992, Lynch again spoke with Hubbell about Rose and Madison Guaranty.[1576] Hubbell told Lynch that he had spoken with Massey and Latham, and neither remembered how Madison Guaranty hired Rose.[1577] Lynch's notes also described Hubbell's conversations with the Clintons. The entry about Mrs. Clinton is unclear: "HRC -- ever conversed with Rose Law Firm/McDougal."[1578] The reference to Governor Clinton is clearer: "No recollection of having anything to do w/Rose law firm."[1579]

[1574] Memo from Loretta Lynch, Clinton Campaign staff member, to Jim Hamilton, Mickey Kantor, Jim Lyons, Kevin O'Keefe, Susan Thomas[e]s at 1 (Mar. 1, 1992) (Doc. No. 263-00000049).

[1575] Id. at 3 (Doc. No. 263-00000050).

[1576] Lynch 2/1/96 GJ at 50.

[1577] Id. at 54; Loretta Lynch, handwritten notes (undated) (Doc. No. DEK008878). The notes stated: "Massey has no recollection." Id. Lynch later stated that Massey told Hubbell that "I don't remember this matter. I don't remember who did what." Lynch 2/1/96 GJ at 51; Memo from Loretta Lynch, Clinton Campaign staff member, to Jim Hamilton, Mickey Kantor, Jim Lyons, Kevin O'Keefe, Susan Thomas[e]s (Mar. 1, 1992) (Doc. Nos. 263-00000048 through 50). As for John Latham, the notes stated that he "had no recollection of hiring the Rose firm." (Doc. No. DEK008878).

[1578] Loretta Lynch, handwritten notes (undated) (Doc. No. DEK008878). Memo from Loretta Lynch, Clinton Campaign staff member, to Jim Hamilton, Mickey Kantor, Jim Lyons, Kevin O'Keefe, Susan Thomases (Mar. 1, 1992) (Doc. Nos. 263-00000048 through 50). Lynch is confident this is not a scrivener's error and could not have been "never." Lynch 2/1/96 GJ at 52.

[1579] Memo from Loretta Lynch, Clinton Campaign staff member, to Jim Hamilton, Mickey Kantor, Jim Lyons, Kevin O'Keefe, Susan Thomases (Mar. 1, 1992) (Doc. No.

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On March 5 and 6, 1992, Lynch and Thomases met with Gerth for several hours.[1580] Thomases told the campaign she had successfully delayed publication of the article until after the Super Tuesday presidential primary.[1581] Gerth had asked whether Mrs. Clinton had spoken with Jim McDougal about Madison Guaranty retaining the Rose Law Firm.[1582] Thomases responded that Mrs. Clinton believed Latham had sent the business to Massey.[1583] Gerth also asked Thomases to confirm Jim McDougal's recollection that he spoke with Governor Clinton about

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DEK008878); Lynch 2/1/96 GJ at 53.

[1580] Lynch 2/1/96 GJ at 41.

[1581] Id. at 42, 66.

[1582] Thomases's handwritten notes (Mar. 4, 1992) (Doc. No. 790-00000026).

[1583] Thomases 2/29/96 GJ at 49; Thomases's handwritten notes (Mar. 4, 1992) (Doc. No. 790-00000026). Thomases had never spoken with Massey and based her statement on information received from Mrs. Clinton and Hubbell. Id. Thomases annotated this question in her notes with this answer: "introduce J. McD[ougal] to Rick Massey w/ John Leather [sic]." Id. (Doc. No. 790-00000027). Thomases later testified that she could not recall whether this answer was in fact provided to her by Mrs. Clinton, she believed that the notes reflected answers she could have gotten from Mrs. Clinton. Thomases 2/29/96 GJ at 57-58; Senate Whitewater Comm. Hearing, supra note 147, at 93 (Dec. 18, 1995) (testimony of S. Thomases); Thomases's handwritten notes (Mar. 4, 1992) (Doc. No. 790-00000027). To the contrary, her substantive understanding was that the Massey-Latham relationship cemented the client relationship. Id. at 91. And Thomases acknowledged that there is no person other than Mrs. Clinton whom she was likely to have asked for this information. Id. at 94. Moreover, the answer to the second question on the list of questions for Mrs. Clinton concerning the relationship of Rolling Manor to Whitewater contains the notation "HC does not remember," seemingly indicating that Thomases had in fact spoken directly with Mrs. Clinton. Thomases's handwritten notes (Mar. 4, 1992) (Doc. No. 790-00000027). In fact, Thomases did have a conversation with Mrs. Clinton on March 6, 1992. Thomases 2/29/96 GJ at 62; Thomases's handwritten notes (Mar. 4, 1992) (Doc. No. 790-00000030). Her notes from the conversation reflected Mrs. Clinton's opinion that the Whitewater investment was the "only stupid dumb thing we ever did." Id.; Thomases's handwritten notes (Mar. 4, 1992) (Doc. No. 790-00000030).

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appointing Beverly Bassett to Securities Commissioner.[1584] Thomases spoke with Governor Clinton about this, and he claimed no recollection of such a conversation.[1585] Governor Clinton also told her he lost money on Whitewater, and would not make the investment if he had to do it over again, in part to avoid the appearance of a conflict of interest.[1586]

2. The Clinton Campaign's Reaction to the New York Times's Article.

a. March 7-8.

Gerth's article, titled "The 1992 Campaign: Personal Finances; Clintons Joined S&L Operator in an Ozark Real-Estate Venture,"[1587] became available electronically March 7, 1992, and in print the next day.[1588] The article focused on the Clinton's Whitewater investment with the McDougals, and Madison Guaranty's financial difficulties.[1589] It also mentioned Governor Clinton hiring a Securities Commissioner, who formerly worked in a firm that represented Madison Guaranty.[1590] The article referred to Mrs. Clinton's legal representation of Madison Guaranty: "The new commissioner approved two novel proposals to help the savings and loan

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[1584] Thomases 2/29/96 GJ at 56; Thomases's handwritten notes (Mar. 4, 1992) (Doc. No. 790-00000026).

[1585] Thomases 2/29/96 GJ at 60; Thomases's handwritten notes (Mar. 4, 1992) (Doc. No. 790-00000028).

[1586] Thomases 2/29/96 GJ at 52-53; Thomases's handwritten notes (Mar. 4, 1992) (Doc. No. 790-00000031).

[1587] Jeff Gerth, The 1992 Campaign: Personal Finances; Clintons Joined S&L; Operator in an Ozark Real Estate Venture, N.Y. Times, Mar. 8, 1992, at A1.

[1588] Lynch 2/1/96 GJ at 35.

[1589] Jeff Gerth, The 1992 Campaign: Personal Finances; Clintons Joined S&L; Operator in an Ozark Real Estate Venture, N. Y. Times, Mar. 8, 1992, at A1.

[1590] Id.

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that were offered by Hillary Clinton, Governor Clinton's wife and a lawyer. She and her firm had been retained to represent [Madison Guaranty]."[1591] The article concluded this "raises questions of whether a governor should be involved in a business deal with the owner of a business regulated by the state and whether, having done so, the governor's wife through her law firm should be receiving legal fees for work done for the business."[1592]

On the afternoon the article first appeared, the Clinton campaign scrambled to respond.[1593] Lynch went to Rose to get Whitewater documents about the Clintons' Whitewater losses from Hubbell.[1594] Lynch said they reviewed Whitewater related documents Webb Hubbell had released to the campaign.[1595] Lynch said she was more concerned with Whitewater than Mrs. Clinton's representation of Madison Guaranty before the ASD because she already knew that Beverly Bassett Schaffer would provide a helpful statement.[1596] Lynch had numerous discussions with Susan Thomases, Jim Lyons, George Stephanopoulos, Bruce Lindsey, other campaign staff, Bassett Schaffer, and Sam Heuer.[1597]

Bassett Schaffer received a copy of the New York Times article from the campaign in the evening of March 7.[1598] She "went to bed and didn't worry about it."[1599] The next day, Lynch

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[1591] Id.

[1592] Id.

[1593] Lynch 2/1/96 GJ at 35.

[1594] Id. at 45-46.

[1595] Id. at 36.

[1596] Id. at 45.

[1597] Id. at 44.

[1598] Schaffer 11/8/95 GJ at 150.

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drafted a statement for Bassett Schaffer, similar to the memoranda Bassett Schaffer had written for Gerth,[1600] and released the statement as part of a press packet on March 8, 1992.[1601] The statement explained how Bassett Schaffer became Securities Commissioner, justified the Department's decisions concerning Madison Guaranty, and asserted that Rose's involvement with Madison Guaranty had no influence.[1602]

The campaign staff contacted Sam Heuer, Jim McDougal's attorney,[1603] about the article either the evening of March 7 or the morning of March 8.[1604] Heuer testified it was probably Jim Blair who contacted him.[1605] Heuer read the article and wrote a statement for Jim McDougal.[1606] The statement claimed McDougal had documents disproving the article's claim that money was diverted from Madison Guaranty to Whitewater, an assertion McDougal charged was "not only false but probably actionable by Mr. McDougal against the New York Times."[1607] The statement said Beverly Bassett's appointment had nothing to do with Madison Guaranty's failure.[1608] Heuer

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[1599] Id.

[1600] Lynch 2/1/96 GJ at 37; Schaffer 11/8/95 GJ at 151-52.

[1601] Lynch 2/1/96 GJ at 49-50.

[1602] Statement of Beverly Bassett Schaffer, former Arkansas State Securities Commissioner (undated) (Doc. Nos. DEK008698 through 8700).

[1603] Sam Heuer began representing Jim McDougal when he was indicted in November 1989. Heuer 4/1/97 GJ at 2, 9-10.

[1604] Id. at 37-38.

[1605] Id. at 37-38, 42-43.

[1606] Id. at 38.

[1607] Statement of Sam Heuer, Attorney for James McDougal (undated) (Doc. No. DEK008695).

[1608] Id (Doc. Nos. DEK008695 through 8697).

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said he tried to contact Jim McDougal before releasing the statement, but was not able to reach him.[1609]

Lynch also drafted a response about Rose's retention by Madison Guaranty:

> The Rose Law Firm (of which Hillary Clinton is a partner) was retained to represent Madison Guaranty. The business was brought to the firm not by Hillary Clinton, but by Richard Massey, long-time friend of John Latham, Madison's CEO. Hillary Clinton did not intervene or attempt to influence any matter concerning Madison Guaranty with the State Securities Commission or any other State regulator. Rick Massey, not Hillary Clinton, was the Rose Firm's lawyer who met with State regulators. . . .[1610]

Lynch said Massey brought in the Madison Guaranty business even though she knew from Hubbell that neither of them had such a recollection.[1611] Lynch said she did this because that was what Susan Thomases believed, it was Thomases's issue, and Thomases had spoken with more Rose Law Firm attorneys, so Lynch thought Thomases had more information.[1612]

b. The "Unpaid Bill" -- March 9 & 10.

The initial story did not address the question of how Mrs. Clinton came to be retained by McDougal. The subject took on prominence on March 9, 1992,[1613] when Gerth sent Thomases

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[1609] Heuer 4/1/97 GJ at 42 ("I don't think I ever got hold of him").

[1610] Lynch 2/1/96 GJ at 48-49; Loretta Lynch, handwritten notes (Feb. 1992) (Doc. No. 263-00000087). The statement was sent to George Stephanopoulos, Bruce Reed (two high level campaign aides), and Bill and Hillary Clinton. Lynch 2/1/96 GJ at 49.

[1611] Lynch 2/1/96 GJ at 54; Loretta Lynch, handwritten notes (Feb. 1992) (Doc. No. DEK008878).

[1612] Lynch 2/1/96 GJ at 55-56.

[1613] Letter from Jeff Gerth, writer for New York Times, to Susan Thomases, Willkie, Farr, and Gallagher attorney (Mar. 9, 1992) (Doc. Nos. 790-00000036 through 37).

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some follow-up questions.[1614] Gerth wrote:

> You have said that Hillary recalls the Madison account being brought into the Rose firm by Rick Massey. McDougal says it came after a request from Governor Clinton who discussed it in Mr. McDougal's office, mentioning the couple's need for financial help. By Mr. McDougal's account, Hillary came by a few hours later and discussed a retainer arrangement with Mr. McDougal. Do either of the Clintons have any recollections concerning this?[1615]

Thomases called Governor Clinton, annotating the letter with the notation: "BC has no recollection."[1616] In a separate notation, partially indecipherable, Thomases wrote: "Ret -- [illegible] received for [illegible] called vs. [illegible] April of 1985 bill vs. [illegible]".[1617]

On March 9 Jim Hamilton attended another meeting where Madison Guaranty's retention of Rose was discussed.[1618] His notes stated: "How client got to law firm -- Massey -- (needed part[ner])."[1619] Hamilton also took notes of a conversation with Susan Thomases on March 11:[1620] "H[illary] took M[assey] to meet McD[ougal] -- before all this Rose worked for McD[ougal] -- he didn't pay. . . . Latham asked Mass[ey] to handle preferred stock -- part[ner] said no -- no pay -- Mass[ey] came to H[illary] -- can you help -- H[illary] took Mass[ey] to McD[ougal] - said

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[1614] Id.

[1615] Id.

[1616] Id. Thomases does not recall whom she received this information from and cannot recall whether it was Governor Clinton. Senate Whitewater Comm. Hearing, supra note 147, at 87 (May 14, 1996) (testimony of S. Thomases).

[1617] Letter from Jeff Gerth, writer for New York Times, to Susan Thomases, Willkie, Farr, and Gallagher attorney (Mar. 9, 1992) (Doc. No. 790-00000036).

[1618] Jim Hamilton's Notes (Mar. 9, 1992) (Doc. No. 000332)

[1619] Id.

[1620] Hamilton 2/28/96 GJ at 65-66; Jim Hamilton's Notes (Mar. 9, 1992) (Doc. No. 000342).

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must have retainer -- [Therefore] l[etter] referred to her as contact person (by Massey) -- Mass[ey] says sec[retary] misunderstood."[1621]

Susan Thomases also took notes from a conversation with an unnamed person that she had on March 10.[1622] These notes stated:

> In 1981 Rose firm did work for MacD [sic] and he did [sic] pay. When Latham came to Massey, Massey went to security lawyers and they said no because he did not pay his bills. Took Rick Massey to MacD [sic]. Massey's agent to commence engagement was HC. Billed $20,000 over 2 years half of which was the preferred stock deal. Never TC Bev Bassett. One ministerial t[elephone] c[onference] to Bev[erly] Bass[ett's] office.[1623]

c. Dealing with Jim McDougal -- March 11-16.

On March 11, 1992, Jim Blair and Loretta Lynch met with Jim McDougal and Sam Heuer.[1624] At Lynch's request, Blair prepared a memorandum of the meeting that evening.[1625] These notes recorded that McDougal said he gave Gerth about eight or ten check stubs,[1626] and that McDougal complained about lack of support from Governor Clinton during McDougal's

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[1621] Jim Hamilton's Notes (Mar. 9, 1992) (Doc. No. 000342); Hamilton 2/28/96 GJ at 68.

[1622] Thomases's handwritten notes (Feb. 1992) (Doc. No. 790-00000032). Thomases said she could not remember who gave her this information. Thomases 2/29/96 GJ at 68. She testified that she could have gotten the information from Mrs. Clinton, Loretta Lynch or Webb Hubbell. Id.

[1623] Thomases's handwritten notes (Feb. 1992) (Doc. No. 790-00000032).

[1624] Blair 12/7/95 GJ at 8-9; Jim Blair notes (Mar. 11, 1992) (Doc. Nos. DEK004883 through 87).

[1625] Blair 12/7/95 GJ at 24; Memo from Jim Blair to File (Mar. 11, 1992) (Doc. Nos. DEK004883 through 87). Blair believes these notes cover virtually everything that was discussed in the meeting. Blair 12/7/95 GJ at 9, 49. Blair therefore believes that unmentioned items, such as, for example, a discussion of Mrs. Clinton's work before the ASD, were not discussed. Blair 12/7/95 GJ at 49.

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1990 criminal trial.[1627] McDougal said that the Clintons did not understand the Whitewater development, and when he tried to discuss it, the Governor's "eyes would glaze over."[1628]

In Blair's notes, McDougal also addressed Governor Clinton's solicitation of legal work for his wife:

> He said he remembered explicitly that in 1984, he had a new leather contour chair -- Bill C came jogging by and came in and laid down in the chair and his sweaty body left a permanent stain. He claimed that Bill said they needed money -- that McD[ougal] needed to give Hillary some legal work -- he said he thought one lawyer could screw up deals as good as another. . . . He said it wasn't two hours later that Hillary came by to set up the retainer. He said he and Susan McD[ougal] joked about giving Hillary legal business.[1629]

Heuer later testified that this was the first time he heard about the "jogging incident" story.[1630]

[1626] Blair 12/7/95 GJ at 26.

[1627] Id. at 29; Memo from Jim Blair to File (Mar. 11, 1992) (Doc. No. DEK004884).

[1628] Blair 12/7/95 GJ at 34; Memo from Jim Blair to File (Mar. 11, 1992) (Doc. No. DEK004887).

[1629] Blair 12/7/95 GJ at 38; Memo from Jim Blair to File (Mar. 11, 1992) (Doc. Nos. DEK004887, 4885). Blair said that he did not speak with either Mr. or Mrs. Clinton about these comments made by Jim McDougal. Blair 12/7/95 GJ at 51-52. In Blair's opinion, however, Governor Clinton was never concerned about money, though Mrs. Clinton was more so. Id. 40-41. Moreover, he does not believe that the underlying premise, that the Clintons needed money, was true. Id. at 43. Lynch testified that some investigation was done on the "jogging incident" rumor. Lynch 2/1/96 GJ at 104. Lyons spoke with Governor Clinton about it and he told him that they could not recall such an incident. Id.

[1630] Heuer 4/1/97 GJ at 108-09. On March 12, 1992, Susan McDougal was quoted in the Washington Post about Mrs. Clinton soliciting business from Jim McDougal.

> "Hillary came in one day and was telling us about the problem. The problem was finances, her finances. . . . She came to Jim's [McDougal's] office. I remember Jim laughing and saying afterward, 'Well, one lawyer's as good as another, we might as well hire Hillary.' . . . . She was on retainer. I remember everyone sitting around laughing and saying: 'We need to hire Hillary Clinton.'"

David Maraniss & Michael Weisskopf, Lawyer Will Review Arkansas Land Deal, Wash.

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Blair asked McDougal to stop talking to the press.[1631] Blair said he asked this on his own initiative because he believed McDougal's actions were harmful to McDougal and the campaign.[1632] Everyone in the meeting agreed that McDougal should not talk to the press.[1633] According to Blair's notes, McDougal also explained that funds had not gone from Madison Guaranty to Whitewater, but came lawfully from Madison Marketing, an affiliate owned by Susan McDougal.[1634] Also according to Blair's notes, McDougal blamed political factors for closing Madison Guaranty.[1635] McDougal admitted, however, that John Latham had falsified certain board minutes and granted himself an unauthorized bonus.[1636]

On March 16, 1992, Jim Blair wrote a letter to Sam Heuer, which Heuer showed to Jim McDougal.[1637] In this letter, Blair said the Clintons "will characterize ['WWDC' --Whitewater Development Company] as a bad business deal where money was lost."[1638] Blair continued:

Although the Statute of Limitations may not have run as to civil or criminal

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Post, Mar. 12, 1992, at A1.

[1631] Blair 12/7/95 GJ at 62; Memo from Jim Blair to File (Mar. 11, 1992) (Doc. No. DEK004885).

[1632] Blair 12/7/95 GJ at 62-63.

[1633] Heuer 5/20/97 GJ at 3.

[1634] Blair 12/7/95 GJ at 65; Memo from Jim Blair to File (Mar. 11, 1992) (Doc. No. DEK004885).

[1635] Blair 12/7/95 GJ at 69; Memo from Jim Blair to File (Mar. 11, 1992) (Doc. Nos. DEK004885 through 86).

[1636] Blair 12/7/95 GJ at 71; Memo from Jim Blair to File (Mar. 11, 1992) (Doc. No. DEK004886).

[1637] Letter from Jim Blair to Sam Heuer (Mar. 16, 1992) (Doc. No. 263-00000264). Heuer 4/1/97 GJ at 109-10. J. McDougal 4/3/97 GJ at 50-51.

[1638] Jim Blair letter to Sam Heuer (Mar. 16, 1992) (Doc. No. 263-00000264).

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> liability on the part of anyone who may have misused funds of WWDC (assuming such activity was concealed) there is no intent under the current state of developments to try to prosecute, sue or even point the finger at any such person, if any.
>
> The McDougals have been through a lot of trauma. The Clintons are sure that the accusations made by the New York Times about Jim are not true. I regret that the McDougals gave away records we did not have copies of etc. without talking to you - obviously they were taken advantage of. I hope they will seek your counsel in advance in the future. I hope this clarifies the Clinton position.[1639]

Jim McDougal said he understood the letter as "a definite threat."[1640] Heuer testified that in his view as well, Blair had threatened to sue McDougal in that letter. Heuer said the wording of that letter would cause him to tell a client "you might get sued here, you better be careful."[1641]

Blair said he wanted McDougal to understand that if he did not stop saying the things he was saying, he was vulnerable both criminally and civilly.[1642] Blair believed that McDougal knew him well enough to know "that if he did enough bad things to my friends that I thought action had to be taken, that I was capable of doing that."[1643] Blair said that because he sent a copy of the letter warning McDougal to Loretta Lynch, he believed he had the campaign's authorization to send it.[1644] Blair said he did not speak with the Clintons about the letter and

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[1639] Id.

[1640] J. McDougal 4/3/97 GJ at 50-51.

[1641] Heuer 4/1/97 GJ at 109-10.

[1642] Blair 12/7/95 GJ at 81.

[1643] Id. at 84.

[1644] Id. at 87; Fax cover sheet to Loretta Lynch and Letters from Jim Blair to Sam Heuer, attorney for Jim McDougal (Mar. 16, 1992) (Doc. Nos. DEK005290 through 92).

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assumed he had their authorization to do what he felt was necessary.[1645]

Heuer discussed Blair's letter and warning with Jim McDougal.[1646] Heuer said they would have welcomed a lawsuit in order to retrieve Whitewater documents previously given to the Clintons.[1647] They felt that if the Clintons wanted a fight, they would have a fight.[1648]

d. The Brown-Clinton Debate and Mrs. Clinton's Public Statements -- March 15 - 16.

During a March 15, 1992 debate, Jerry Brown criticized Governor Clinton about Mrs. Clinton's work before state regulators at the same time he was Governor.[1649] Governor Clinton defended Mrs. Clinton and her ethics.[1650] The next day on March 16, 1992, Mrs. Clinton responded by saying she had done no work before state agencies and received no compensation for work Rose did before state agencies.[1651] Specifically, Mrs. Clinton said: "As far as I know,

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[1645] Blair 12/7/95 GJ at 79, 87.

[1646] Heuer 5/20/97 GJ at 11.

[1647] Id. Susan McDougal told the Washington Post that she had given all the Whitewater documents to her brother to give to Governor Clinton at Mrs. Clinton's request. Maraniss and Weisskopf, Lawyer Will Review Arkansas Land Deal, Wash. Post., Mar. 12, 1992, at A1.

[1648] Heuer 5/20/97 GJ at 11.

[1649] See Jerry Roberts, Angry Clash Between Clinton and Brown/ Dispute over Ethics at end of Democratic Debate, S.F. Chron., Mar. 16, 1992, at A1 ("I think he's got a big electability problem. . . . He is funneling money to his wife's law firm as state business, that's number one. Number two, his wife's law firm is representing clients before state of Arkansas agencies, his appointees").

[1650] See David Lauter, Brown and Clinton in Bitter Clash Democrats: Californian accuses opponent and wife of conflicts of interest. Angry Clinton calls him an unprincipled politician, L.A. Times, Mar. 16, 1992, at 1 (Governor Clinton explained that his wife has avoided representing clients directly before the state: "My wife is a fine person who has not done anything unethical").

[1651] See Dan Balz, Edward Walsh, Clinton's Wife Finds She's Become Issue; Arkansas

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I'm the only lawyer related to a public official that I'm aware of in the country who had actively practiced law who has never even shared in a penny of state funds that have ever gone to my firm."[1652] Press reports also quoted her as saying that her legal work for Madison Guaranty "was not related to the S&L's dealings with state regulators."[1653]

e. Subsequent Press Inquires -- March 22 - 23.

On March 22, 1992, the Washington Post sent the campaign questions directed to Mrs. Clinton, including her representation of Madison Guaranty, general representation before state agencies, and Whitewater.[1654] On March 24, 1992, Lynch prepared draft responses.[1655] The draft answers contain someone's handwritten addition: "HRC never rep[resente]d anyone before a st[ate] ag[ency] and does not recall any instance other than the one related to Mad[ison] G[uaranty] when her name was even listed as a contact."[1656] This became the statement that "Hillary Clinton knows of no instance in which she ever represented anyone before a state agency. Further Mrs. Clinton does not recall any instance other than the matter related to

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Lawyer Denies Impropriety but Vows to Rethink Her Role, Wash. Post, Mar. 17, 1992, at A6; Gwen Ifill, Hillary Clinton Defends Her Conduct in Law Firm, N.Y. Times, Mar. 17, 1992, at A1.

[1652] Dan Balz, Edward Walsh, Clinton's Wife Finds She's Become Issue; Arkansas Lawyer Denies Impropriety but Vows to Rethink Her Role, Wash. Post, Mar. 17, 1992, at A1.

[1653] Gwen Ifill, Hillary Clinton Defends Her Conduct in Law Firm, N.Y. Times, Mar. 17, 1992, at A20.

[1654] Id (Doc. Nos. 263-00000193 through 94).

[1655] Draft responses from Loretta Lynch for Hillary Clinton (Mar. 24, 1992) (Doc. Nos. 263-00000124 through 26).

[1656] Draft responses from Loretta Lynch for Hillary Clinton (undated) (Doc. Nos. DEK 200951 through 57, at 53).

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Madison Guaranty in which her name was even listed as a contact for any representation."[1657]

Mrs. Clinton appears to have been directly involved in formulating some of the responses. On March 23, 1992, Diane Blair sent Mrs. Clinton proposed answers to Gerth's pending questions, in which she "marked those where Betsey or I made slight changes."[1658] The original document produced to the OIC has blue ink writing, in what appears to be Mrs. Clinton's hand, making small editorial changes to the draft answers.[1659] Two of the questions and answers that Mrs. Clinton apparently read (but made no editorial changes to) were: "Q. Did you discuss with Jim McDougal in 1984 or 2985 [sic] the retention of you and your firm by Madison Guaranty? A. I recall one conversation with Jim McDougal in April of 1985 concerning the retention of the firm by Madison Guaranty. I am prohibited by the Arkansas Rules of Professional Conduct from elaboration on the process of retention."[1660] And: "Q. Have you ever been involved with a Rose Firm client on a matter that involves regulation or action by the State of Arkansas? . . . A. I have tried to avoid such involvement and cannot recall any instance other than the Madison Guaranty matter in which I had any involvement, and my involvement there was minimal."[1661]

[1657] Draft responses from Loretta Lynch for Hillary Clinton (undated) (Doc. Nos. 263-00000124 through 26) (Doc. Nos. 263-0000124 through 26 at 25).

[1658] Fax from Diane Blair to Hillary Clinton at 2 (undated) (Doc. Nos. DEK 009733 through 34).

[1659] Hillary Clinton handwritten response to draft of proposed answers (undated) (Doc. Nos. DEK 009736).

[1660] Hillary Clinton response to draft of proposed answers (undated) (Doc. No. DEK 009741).

[1661] Hillary Clinton response to draft of proposed answers (undated) (Doc. No. DEK 009742).

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f. At the Rose Law Firm -- March 23 - 26.

When Rick Massey learned newspaper articles had criticized Rose's representation of Madison Guaranty, he ordered his files for the preferred stock matter and the broker dealer matter from remote storage.[1662] His secretary, Vera Hitt, retrieved the files from storage on March 24, 1992.[1663] Vince Foster asked Massey for these files.[1664] Foster told him he needed the files to prepare a response on behalf of the firm.[1665] Massey had his files copied for Foster.[1666]

On March 26, Massey signed a memorandum about representing Madison Guaranty before the ASD.[1667] Massey later speculated that either Vince Foster or Loretta Lynch prepared the memorandum.[1668] The relevant portion stated:

> I performed substantially all legal service on behalf of my firm . . . . My work was performed under the supervision of senior members of the Securities Section of this firm. To my knowledge, Ms. Clinton had no contact, either in person, telephonically or otherwise, with any ASD staff member with respect to [these] matter[s], that is, the stock offering and the broker/dealer application.] Further, I do not believe that any involvement by her in connection with this matter

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[1662] Massey 12/3/97 GJ at 34.

[1663] (Doc. No. 105-00054216); Massey 12/3/97 GJ at 34-36. Also on March 25, "Millie" checked out files labeled "HRC Time Sheets." RIC 121481. Millie Alston does not recall checking out any of Mrs. Clinton's time sheets. Alston 4/16/96 GJ at 20; Alston 5/30/96 Int. at 2-3. Mrs. Clinton's time sheets from 1985-86 have never been produced.

[1664] Massey 12/3/97 GJ at 40.

[1665] Id.

[1666] Id. at 41.

[1667] Massey memo (Mar. 26, 1992) (Doc. Nos.1180-00000233 through 35).

[1668] Massey 12/3/97 GJ at 56-57. The original of this document was found in Foster's briefcase in the attic of his residence in July 1997. It contained Massey's original signature. See Massey 12/3/97 GJ at 55. The campaign did not produce a copy of this document. Furthermore, the campaign never released it to the press. This document appears to be the memo that Hubbell said Foster prepared after he and Foster interviewed Massey. See Hubbell 12/19/95 GJ at 91.

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meaningfully influenced the ASD's ultimate determination with respect to this matter.[1669]

The memorandum contained the same statement concerning the legal representation of Madison Guaranty over the broker dealer matter.[1670] The memorandum does not discuss how Madison became a Rose client.[1671] When Massey signed this memorandum he had reviewed his files,[1672] but not the billing records.[1673] He testified he would not have made the same statements if the billing records been available for his review, because they indicated that Mrs. Clinton had a telephone call with Beverly Bassett, the Securities Commissioner.[1674]

Massey said that around March 26, 1992, he had a brief meeting with Jim Blair and Loretta Lynch at the campaign headquarters.[1675] Massey said Blair and Lynch discussed whether the work performed by the Rose Law Firm for Madison Guaranty was proper and whether Mrs. Clinton used political influence with Bassett to get the Securities Department to approve Madison Guaranty's preferred stock request.[1676] Massey said nothing done for Madison Guaranty

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[1669] Massey memo (Mar. 26, 1992) (Doc. Nos. 1180-00000233 through 34).

[1670] Massey memo at 2 (Mar. 26, 1992) (Doc. No. 1180-00000234).

[1671] Massey 12/3/97 GJ at 61.

[1672] Id. at 59.

[1673] Id. at 60.

[1674] Id.

[1675] Id. at 38-39. Massey initially identified Susan Thomases rather than Lynch, but changed his mind when he saw Thomases on television. Massey 11/7/95 GJ at 38. Massey then testified that Lynch was the woman at the meeting. Massey 12/3/97 GJ at 38. Blair denied speaking with Massey. Blair 12/7/95 GJ at 57. Lynch stated that she could not remember whether she had talked to Massey or if someone else did. Lynch 5/14/96 Senate Whitewater Comm. Depo. at 99-100, 122; Blair 12/7/95 GJ at 57.

[1676] Massey 12/3/97 GJ at 39.

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was improper.[1677] They gave Massey a copy of the Bassett memoranda she prepared for Gerth.[1678] Massey testified he had never discussed these issues with Mrs. Clinton.[1679] Massey also testified that he did not remember asking Mrs. Clinton to be the billing partner on Madison Guaranty,[1680] and Mrs. Clinton never told him she had spoken with Bassett Schaffer.[1681]

Hubbell had a conversation with Mrs. Clinton about her representation of Madison Guaranty perhaps within a month of the press focus on that issue.[1682] He told her the billing records showed she had one conversation with Bassett.[1683] Mrs. Clinton responded she did not remember the call, and Hubbell replied, "Well, it's in the bills and Rick does remember that it was in your office."[1684]

By March 26, 1992, Foster prepared a chronology on his firm computer[1685] about Rose's representation of Madison Guaranty, beginning with Jim McDougal's April 3, 1981 hiring the

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[1677] Id.

[1678] Massey 11/7/95 GJ at 92.

[1679] Id. at 93-94.

[1680] Id. at 95-96.

[1681] Id. at 93; Massey 12/3/97 GJ at 52.

[1682] Hubbell 12/19/95 GJ at 177-78.

[1683] Id. at 178.

[1684] Id.

[1685] This document originated on Foster's computer at the Rose Law Firm. Clark 12/2/97 GJ at 135-36. Clark identified the numbers that appear on the second page, "RLL1860.WP5" as a document number under the computer system. Id. at 136. He was able to call up the document on their system which showed that the document was created for Foster by his secretary, Lorraine Cline. Id. Furthermore, the additional numbers on second page, "032692," is the date the document was printed, and it changes every time it is printed. Id. at 137. Clark was able to de-archive the document and print it off. Id. at 136-37. His printed version had a date of "120197."

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firm to represent Bank of Kingston and ending with a February 21, 1990 Arkansas Gazette report of John Latham admitting to falsifying records.[1686] The chronology was found in Vince Foster's briefcase in his attic in July 1997.

The chronology included the following entries:

07/30/82	Final bill of Rose Law Firm to Bank of Kingston (a/k/a Madison Bank & Trust) of $5,000 fees and $893 in costs (contains note in Giroir's hand: "Have Hillary bill with letter to McDougal -- will pay.")
1983	Bank of Kingston final bill written off
10/23/84	$5,000 paid on Bank of Kingston bill
04/85	Latham, as Madison's CEO, hired the Rose Law Firm to request an interpretative ruling of the S&L statutes from the S&L Administrator.[1687]

The chronology does not refer to Rick Massey bringing the business to the firm, nor is there any mention of Mrs. Clinton's telephone call with Beverly Bassett Schaffer.[1688]

Foster's chronology is also significant because of the "computer card" name associated with the document on the Rose Law Firm computers.[1689] This document, when discovered on the computers in December 1997, was entitled "Clinton campaign document II."[1690] This enabled

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Id. at 137.

[1686] Timeline Re: Madison Guaranty Representation (undated) (Doc. No. 1180-00000236 through 40).

[1687] Id. (Doc. Nos. 1180-00000236 through 37).

[1688] Id. (Doc. Nos. 1180-00000236 through 40).

[1689] Clark 12/2/97 GJ at 137-38.

[1690] Id. at 138.

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Rose to de-archive another document entitled, "Clinton campaign document I."[1691]

The "Clinton campaign document I" from Foster's computer, presumably prepared prior to the March 26, 1992 document II, was an edited copy of a draft campaign statement prepared by Mrs. Clinton. The document that Mrs. Clinton had drafted was produced to the OIC by her attorney.[1692] Additionally a copy of the statement with handwritten changes was found in Foster's attic in July 1997.[1693] Mrs. Clinton testified that the handwriting belonged to Vince Foster.[1694] The version on Foster's computer at the Rose Law Firm contained Mrs. Clinton's original statement, amended by the handwritten changes.[1695] As modified on Foster's computer, Mrs. Clinton's statement read:

> In April 1985, Massey went to partners in the securities law section for permission to do the work Latham wanted him to do. He was told that the Firm could not do any further work for McDougal or his businesses until the bill owed the Firm for the previous work was paid.

[1691] Id. at 138-39; Clinton Campaign Document I (prepared on Vince Foster's computer) (undated) (Doc. No. MGSL-FR-00000014-17).

[1692] H. Clinton Draft Campaign Statement (1992) (Doc. Nos. DEK200962 through 63) (LR GJ Exh. No. 1601). Mrs. Clinton stated that as best she could recall, her purpose in writing the statement was to put down her memory of what happened at the time Madison Guaranty was represented by the firm. H. Clinton 1/26/96 GJ at 54. She was unable at that time to identify when, during the campaign, she drafted the document. Id. She did not believe that the statement was ever publicly released. Id. at 53-54.

[1693] Fax from Diane Blair to Webb Hubbell (Mar. 23, 1992) (Doc. No. 1180-00000012 through 13).

[1694] H. Clinton 4/25/98 Depo. at 29. Mrs. Clinton was unable to say whether she had asked Foster to edit her statement, but explained that "Vince Foster edited everything." Id. at 29-30.

[1695] Compare Clinton Campaign Document I (prepared on Vince Foster's computer) (undated) (Doc. No. MGSL-FR-00000014-17), with Fax from Diane Blair to Webb Hubbell (Mar. 23, 1992) (Doc. No. 1180-00000012 through 13) (copy with Foster's handwritten changes).

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Massey then came to see me because he knew that I knew McDougal . . . . I told him I would talk with McDougal for him and see if McDougal would be willing to pay the past due bill. . . .

When I visited [McDougal], I told him that I understood Latham wanted Massey to do some work for them. . . . McDougal called Latham into the meeting . . . McDougal told Latham he could proceed with Massey, and he told me that he would arrange to pay the past due bill.

[After discussing this with my partners] Massey and I called McDougal [to tell him a $2,000 retainer was required] but he was not in so we talked with Latham and another employee.

During the first week or so of Massey's work for Madison Guaranty, [Massey] kept me advised because he wanted me to be generally aware of what he was doing in case he had any trouble being paid for his work.

I recall some uncertainty by Massey about who within the Commissioner's office would handle the issue raised by Madison Guaranty. . . . I have no recollection of ever discussing Madison Guaranty with the Securities Commissioner, although I may have made a procedural inquiry of her or her staff on this issue.

Massey has stated he does not know why he included my name in the letter to the Securities Commissioner, and I do not know either and do not recall ever seeing it before it was sent.

In addition to the matter Massey did for Madison Guaranty, the Firm was requested to handle two other legal matters that were unrelated to the State. The total billed by the Firm to Madison Guaranty for all matters was approximately $21,000.00.

As I have said repeatedly, I did not have any substantive involvement in the work our Firm did for Madison that involved the Securities Commissioner. I did not discuss the merits of that matter with the Commissioner or anyone in her office. . . . I can see how in retrospect that to avoid even the appearance of conflict I should not have become involved at all [in helping Rick Massey work out the delicate client engagement problem he encountered]. . . .[1696]

The precise nature of Foster's interaction with Mrs. Clinton in drafting this document remains an open question. However, contemporaneous evidence established that it was a collaborative effort and that Diane Blair and Webb Hubbell were aware of Foster and Mrs.

[1696] Clinton Campaign Document I (prepared on Vince Foster's computer) (undated) (Doc. No. MGSL-FR-00000014-17).

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Clinton's working together on this. On March 23, 1992, Diane Blair faxed five pages (including a cover sheet) to Hubbell, of which only the first two pages have been produced to the OIC.[1697] The second page has Diane Blair's handwritten note: "Webb -- Vince + Hillary are drafting her answers on law practice. Ignore marginal notes. D."[1698] These documents and Mrs. Clinton's statements regarding them are discussed in detail in Chapter 3 of this Part.

g. April Breslaw Learned from the Media Coverage That Rose Had Some Involvement with Madison Guaranty before Frost.

Gerth's article appeared on Sunday, March 8, 1992, eleven months after Frost settled. On Monday, March 16, 1992, April Breslaw wrote the first of two brief memoranda discussing media interest in Frost and Rose's Madison Guaranty work:

> First, it's my understanding that Hilary [sic] Clinton's representation of Madison consisted of limited work related to raising capital for the S&L. It's also my understanding that Ms. Clinton's representation had finished four years before the S&L failed. Consequently, I don't believe there was an existing conflict of interest at the time we retained the Rose firm to work on the Frost case in 1989. The reason we fired the law firm originally hired by Madison to work on this case is also worth mentioning. At that time, Borod and Huggins was representing former directors and officers of several failed banks against the FDIC. . . . Because the Borod and Huggins firm was in direct conflict with us, they were replaced.[1699]

On Tuesday, March 17, 1992, Breslaw wrote:

> Recent news stories have raised questions about Ms. Clinton's representation of clients before Arkansas regulatory agencies during her husband's governorship. In one instance, it appears she contacted Arkansas savings and loan authorities on

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[1697] Fax Transmission Sheet from Diane Blair to Webb Hubbell (Mar. 23, 1992) (Doc. No. 852-00001932 through 33).

[1698] Id.

[1699] Breslaw 3/16/92 Memo. (Doc. No. MGSL-FR-00000045).

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behalf of Madison Savings. It is my understanding that this limited inquiry had to do with a plan for raising capital for the S&L in 1985.[1700]

Breslaw's March 17, 1992 memorandum discusses Rose's retention by the FDIC in 1989, and the firing of Borod & Huggins, which she wrote, "had conflicts which were both direct and severe." She added: "I'm not sure that any of this is relevant to anything, including the election. However, because the Washington Post and New York Times have asked for information about the Frost suit, it seemed appropriate to provide you with some background."[1701] Breslaw, apparently, forgot this issue until the next year, when Susan Schmidt of the Washington Post brought the question to a head.

E. Evidence Relating to Mrs. Clinton.

During the early years of the Clinton Administration, Mrs. Clinton received at least one memorandum regarding the Frost litigation. In the course of investigations conducted by the FDIC, the RTC, and this Office, Mrs. Clinton gave several statements relating to her knowledge of Hubbell's conduct and her own representation of Madison Guaranty.

1. Associate White House Counsel Neil Eggleston Drafted a Memorandum Discussing the FDIC and RTC Investigation of Rose.

On Monday, February 28, 1994, Associated Press reporter Larry Margasak published a story reviewing Frost documents about Seth Ward, criticizing the FDIC Legal Division's "recent

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[1700] Breslaw 3/17/92 Memo. (Doc. No. MGSL-FR-00000046-47).

[1701] Id. (some underlining not in original); see also House Banking Comm. Hearing, supra note 997, at 70-72 (Aug. 10, 1995) (testimony of A. Breslaw) (discussing memo); Breslaw 10/23/95 Senate Banking Comm. Depo. at 46-52 (discussing the 1992 press reports about Hillary Clinton's and the Rose Law Firm's involvement with Madison Guaranty).

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finding that cleared the Rose Law Firm, where Mrs. Clinton worked, of any conflicts," and observing that the FDIC-OIG was going to investigate.[1702]

That same day, Associate Counsel to the President W. Neil Eggleston sent White House Deputy Chief of Staff Harold Ickes a memorandum entitled "Whitewater -- FDIC and RTC Rose Law Firm Issues."[1703] Eggleston's memo reviewed the FDIC Legal Division and RTC-OCOS reports.[1704] Eggleston observed that FDIC Chairman Andrew Hove agreed to have the FDIC-OIG investigate, and that "[w]e should assume . . . that the IG will adopt the broadest possible interpretation of its mandate."[1705]

Eggleston wrote that Rose could be "permanently barred from any further work for the RTC or the FDIC."[1706] Eggleston considered the possibility of "[c]riminal liability for the Rose firm," but said this "would seem even more remote" than a civil action against Rose by the RTC.[1707] The memo cautioned that:

> An ultimate finding that Rose had not disclosed either the prior representation of Madison Guaranty or the Ward relationship would be a finding that Mr. Hubbell was not truthful in his recollection. Mr. Hubbell told the FDIC that he advised FDIC attorneys about the prior Rose representation of Madison Guaranty and believes that he also advised the government attorneys about his relationship with

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[1702] Larry Margasak, Regulators Raised Conflicts Issue But Were Overruled, Docs. Show, A. P., Feb. 28, 1994.

[1703] Memorandum from W. Neil Eggleston, Associate Counsel to the President to Harold Ickes, Deputy Chief of Staff (Feb. 28, 1994) (Doc. Nos. 006-DC-00000014 through 20).

[1704] Id. at 2 (Doc. No. 006-DC-00000015).

[1705] Id. at 2-3 (Doc. Nos. 006-DC-00000015 through 016).

[1706] Id. at 4 (Doc. No. 006-DC-00000017).

[1707] Id.

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Mr. Ward.[1708]

On March 1, Harold Ickes sent a memorandum entitled "Resolution Trust Corporation" directed to "The First Lady."[1709] Ickes attached a copy of Eggleston's memorandum, mentioned a meeting Ickes attended with Roger Altman, Bernie Nussbaum, and "others concerning the RTC statute of limitations," and observed that Altman "received an opinion from an ethics officer of the Treasury Department that he, as acting head of RTC, did not have to recuse himself from matters involving Rose/Madison Guaranty."[1710] Ickes's memo told Mrs. Clinton to "let me know if you want to discuss the attached."[1711] Mrs. Clinton later testified that she told Ickes she did not want to read the memorandum, and did not do so.[1712]

2. Mrs. Clinton's 1994 Statements to the FDIC-OIG and the RTC-OIG.

During the course of their investigations, both the FDIC-OIG and the RTC-OIG questioned Hillary Clinton about her work at Rose for Madison Guaranty. When asked about the 1985 Arkansas Securities Department work Rose did for Madison Guaranty, Mrs. Clinton asserted by affidavit that "[w]hile I was billing partner on this matter, the great bulk of the work was done by Mr. Richard Massey, who was then an associate at Rose."[1713]

On November 10, 1994, FDIC-OIG Special Agents Karen Hepburn and Patrick McKenna

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[1708] Id. at 3 (Doc. No. 006-DC-00000016).

[1709] Memorandum from Harold Ickes, Deputy Chief of Staff to the First Lady (Mar. 1, 1994) (Doc. No. 006-DC-00000013).

[1710] Id.

[1711] Id.

[1712] H. Clinton 4/25/98 Depo. at 139-40.

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interviewed Mrs. Clinton. Mrs. Clinton declined to provide a sworn statement.[1714] During the interview, Mrs. Clinton said:

1) she did not consider herself to be the attorney of record for Rose's representation of Madison before the ASD;

2) she does not believe Rose had a conflict of interest in the Frost case;

3) she did not recall the IDC matter;

4) Rick Donovan handled the "wet/dry" research related to IDC; and

5) she knew Seth Ward as Suzy Hubbell's father and believed that Hubbell represented Ward as an individual on many issues.[1715]

When asked about FirstSouth, Mrs. Clinton said she recalled there were issues involving C. Joseph Giroir but was unaware of what those issues may have been.[1716]

3. Mrs. Clinton's 1995 Sworn Statements.

On April 22, 1995, Mrs. Clinton testified under oath at the White House about Rose's relationship with Madison Guaranty. She testified about how the work came to Rose.[1717] When asked about any work she had done for Madison Guaranty other than the Arkansas Securities Department work, Mrs. Clinton testified:

Q. Now, think just a minute and I want to try to get, from your recollection, from the time of the advance against fees or retainers started in May of '85 until it was terminated in July of '86, do you recall today doing any other

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[1713] H. Clinton 9/16/94 FDIC-OIG Aff. at 5.

[1714] H. Clinton 11/10/94 FDIC-OIG Int. at 1.

[1715] Id. at 3-4.

[1716] Id. at 5.

[1717] H. Clinton 4/22/95 Depo. at 8-11.

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work on anything other than the matter with the Arkansas Securities Department?

A. I have a recollection of the firm during that time doing some other minor matters for Madison, but I couldn't tell you what they were right now.

Q. Do you recall what you might have done --

A. No.

Q. -- personally?

A. No, I cannot recall that.[1718]

Mrs. Clinton said that she did not know that Madison had "any regulatory net worth problem."[1719] Similarly Mrs. Clinton stated: "I think IDC is something different from the stock offering, but I don't have any memory of that."[1720] She also stated: "[T]here was some property that Madison either owned or was trying to develop that was partially in a township that was dry and they were curious about how to make it wet, or something like that. That's all I remember right now."[1721] As to her work for Madison Guaranty, Mrs. Clinton admitted, "Well, I did work. I just can't remember 10 years from the work exactly what the work was."[1722]

[1718] Id. at 30-31.

[1719] Id. at 33-34.

[1720] Id. at 41.

[1721] Id. at 42.

[1722] Id. at 43. See id. at 21 (when questioned about the origin of the April 23, 1985 date in her FDIC affidavit (a date contained in the subsequently discovered Rose-Madison Guaranty billing records), Mrs. Clinton testified, "At this moment I cannot reconstruct where it came from"); id. at 29 (with regard to Rose's work for Madison Guaranty before the Arkansas Securities Department, Mrs. Clinton testified, "I was not substantively involved in any way that I can even imagine, and certainly that I can recall, with the preparation of any of these documents").

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Mrs. Clinton answered RTC Interrogatories on May 24, 1995. She asserted that she did not recall reading: 1) the FSLIC Report of Examination of Madison Guaranty as of January 20, 1984, which concluded that Madison Guaranty had a negative net worth; 2) the 1984 Supervisory Agreement between Madison Guaranty and FSLIC; 3) the FSLIC Report of Examination of Madison Guaranty as of March 4, 1986; and 4) FSLIC's August 15, 1986 cease and desist order to Madison Guaranty.[1723] Mrs. Clinton denied that she was the lawyer who brought Madison Guaranty to Rose in 1985, saying Rick Massey approached her with the idea.[1724] Mrs. Clinton said that some Rose lawyers "were opposed to doing any more work for Jim McDougal or any of his companies until he paid his bill."[1725] She said that she visited McDougal at his office on April 23, 1985, and told him that Rose would not let Massey do work for him until Madison Guaranty paid its old bill.[1726] Mrs. Clinton said, "McDougal agreed that Massey could proceed with the work and informed me he would arrange to pay the past due bill. McDougal also indicated that he was agreeable to some kind of prepayment arrangement."[1727]

Mrs. Clinton stressed that she "was not 'in charge' of the Rose Law Firm's work for Madison Guaranty in 1985-86," although she was the billing partner.[1728] According to her, Rick Massey did "the great bulk of the work" and she "was not involved in the day-to-day work on the

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[1723] H. Clinton 5/24/95 Interrog. Resp. at 33.

[1724] Id. at 34-35.

[1725] Id. at 34

[1726] Id. at 34-35

[1727] Id. at 35.

[1728] Id.

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project."[1729] Mrs. Clinton agreed that she "may have made one telephone call to the Arkansas Securities Department to find out to whom Mr. Massey should direct any inquiries regarding an S&L matter."[1730] She said she did not remember to whom she spoke.[1731]

Mrs. Clinton claimed Rose "performed only a very few specific legal tasks for Madison Guaranty."[1732] When asked about a January 30, 1986 invoice for Rose's work on Madison Guaranty's IDC matter, Mrs. Clinton said she had no recollection of any conference with John Latham, pointing out that the invoice "does not indicate which Rose lawyer worked on what matter or how much time each lawyer spent."[1733] Mrs. Clinton also said she did not believe she knew anything about Castle Grande.[1734]

IV. ANALYSIS

A. Webb Hubbell and the Rose Conflicts.

This Office's investigation established that the Rose Law Firm's representation of the FDIC and RTC as receivers of Madison Guaranty was rife with conflicts of interest, which, if known to the FDIC when Rose was retained, might have resulted in Rose's disqualification. Rose arguably earned legal fees it would not otherwise have earned, and enabled itself subsequently to earn fees from the FDIC and RTC as outside counsel in other matters.

[1729] Id. at 40.

[1730] Id. at 41.

[1731] Id.

[1732] Id. at 37.

[1733] Id. at 44.

[1734] Id. at 73-74.

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The evidence also established that, at the time these conflicts were initially concealed in March 1989, the partners at Rose (including Webb Hubbell, Vince Foster, and Hillary Clinton) must have been aware of the consequences of such conflicts and their possible effect on the firm. The record contains numerous references to the issue in the Rose files. It also reflects a particularly noteworthy event -- the malpractice allegations against Giroir -- in the then-recent past that a reasonable trier of fact would conclude was known to the partnership. As a result of Giroir's actions, the partners were personally liable for a settlement of $500,000 and their insurance carrier paid a settlement of $2.5 million. Giroir, then the head of the firm, left Rose and took his clients with him. By Hubbell's own admission, he, Foster, and Mrs. Clinton were all angry and upset over this.

It was therefore the judgment of the Independent Counsel that it was untenable for Hubbell to maintain (as he did when initially questioned) that the conflicts of interest were of no consequence. To the contrary, the grand jury found probable cause to believe that Hubbell had willfully concealed a host of conflicts of interest, and Hubbell ultimately pled guilty to a felony charge relating to concealing a material conflict of interest from the RTC. Among the conflicts Hubbell concealed were: Mrs. Clinton's work for Madison Guaranty before the ASD; Mrs. Clinton's work for Madison Guaranty on the Castle Grande transaction; his own work for Ward in connection with that transaction; his work for Ward in connection with Ward's suit against Madison Guaranty; his other work for Ward and Ward's corporation, POM; and Rose's work for a Frost officer, Jimmie Alford. Taken individually, and collectively, these conflicts would likely have been sufficient to preclude Rose's representation of the FDIC and RTC.

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The Independent Counsel also determined that the evidence strongly supported the conclusion that Hubbell repeatedly lied to FDIC and RTC investigators to conceal his misconduct. When first questioned by the FDIC Legal Division, Hubbell was serving as Associate Attorney General of the United States, the third-highest ranking official in the Department of Justice. When later questioned by the FDIC and RTC OIGs, he concealed his role with Ward and Mrs. Clinton's role with Madison Guaranty. His statements were contradicted both by the testimony of others and by physical evidence (Hubbell's fingerprints and his own billing records). Partially as a result of Hubbell's actions, the United States Congress was misled when regulators testified based on his misconduct.

B. The Prominence of Ongoing Events.

This investigation also developed evidence from which a jury could reasonably infer that Hubbell's concealment of the conflicts of interest was motivated by a desire to conceal the Rose firm's connection to potentially criminal behavior.

As a result of his involvement in Frost, Hubbell reviewed both the FHLBB examination report calling the Castle Grande land deal a fraud, and the Borod & Huggins Report suggesting that his father-in-law was subject to potential criminal liability. He was reminded of possible conflicts by former-ASD Commissioner Schaffer, who pointedly reminded him that Rose (through Massey and Mrs. Clinton) had used the Frost accounting reports as affirmative support for its arguments to the ASD. Based on the foregoing, and Hubbell's own involvement in the Castle Grande transaction, Hubbell recognized the potential criminal exposure of his family member Ward and the potential connection of that criminal exposure to his firm, himself, and

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Mrs. Clinton.

The potential for criminal proceedings was more than hypothetical. At virtually the same time Rose undertook its representation of the FDIC and the RTC in the Frost matter, the FBI was conducting a parallel criminal investigation of Madison Guaranty -- a fact well known to Hubbell and the other Rose partners. This investigation resulted in John Latham's guilty plea and the indictments of Jim McDougal and Jim and David Henley (Susan McDougal's brothers). These events could not have gone unnoticed by Hubbell or Mrs. Clinton. Indeed, the evidence established that Hubbell, Mrs. Clinton, and Governor Clinton all followed McDougal's trial with some interest.

McDougal's trial and the Frost case were not, of course, the only events from which one could conclude that Hubbell was conscious of Rose's representation of Madison Guaranty. During the same period, Seth Ward sued Madison Guaranty and won a judgment based upon the unfunded April 1986 cross-note -- the same cross note that Hubbell advised Ward on when it was executed and that the option agreement drafted by Mrs. Clinton concealed from the federal regulators. Hubbell attended Ward's trial and even helped him attempt to collect on his judgment.

In 1992, the glare of the national media spotlight focused on the Clintons, Whitewater, the Rose Law Firm, and Madison Guaranty. That spring, Hubbell, Foster, and Mrs. Clinton reviewed Rose records relating to Madison Guaranty, including Mrs. Clinton's billing records. Foster created a detailed chronology of events relating to the Madison Guaranty representation. The evidence supports the inference that Foster shared his thoughts with both Hubbell and Mrs.

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Clinton. Hubbell independently reviewed Mrs. Clinton's billing records and provided detailed summaries of them to campaign staff. Further highlighting the apparent importance of the issue, Hubbell and Foster each then removed some of the Rose records -- Hubbell taking his to Washington, Foster placing certain documents in his family attic, and Foster hiding other documents in Washington.

This evidence cannot, of course, conclusively resolve the issue one way or the other. Nonetheless, a trier of fact could reasonably conclude that the recency, significance, and frequency of events arising between 1986 and 1992 refreshed the memories of Hubbell and Mrs. Clinton about their involvement with Madison Guaranty. In the view of the Independent Counsel, the evidence would appear to support such an inference. Particularly telling is that, at the time of the first official inquiries into their conduct in 1994, Hubbell and Mrs. Clinton's detailed review of the Rose records of the Madison Guaranty representation under the glare of national scrutiny was only two years in the past.

V. CONCLUSION

After Jim McDougal's departure from Madison, many investigations -- some civil, some criminal and some by the media -- examined the connections between Madison Guaranty and the Rose Law Firm. Webb Hubbell initially concealed those connections from the FDIC and the RTC. Later, in 1994, when he was questioned about those connections, he continued to conceal them, notwithstanding his recent and detailed review of the Rose Law Firm records during the Clinton Presidential campaign.

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PART B

THE RELATIONSHIP OF MADISON GUARANTY, CMS, AND THE ROSE LAW FIRM

Chapter 3:

Mrs. Clinton's Madison Guaranty Representation

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I. INTRODUCTION

Mrs. Clinton represented Madison Guaranty between April 1985 and July 1986, a time when the institution was in severe financial trouble and when insiders committed numerous criminal and otherwise fraudulent acts. The most serious of those fraudulent and criminal acts are the subject of Chapter 1 of this Part. Several individuals were eventually convicted of or pleaded guilty to federal crimes for their roles in connection those transactions. As Chapter 1 showed, Mrs. Clinton represented Madison Guaranty in regard to some of the fraudulent transactions, and Madison Guaranty insiders used and misused her legal services to thwart federal examiners.

After July 14, 1986, when federal regulators had demanded that the McDougals be removed from control of Madison Guaranty and Mrs. Clinton ended Madison Guaranty's retainer arrangement, it was clear that the insiders had engaged in substantial misconduct, including possibly having committed crimes. The Clintons' association with the McDougals, and in particular Mrs. Clinton's representation of Madison Guaranty, were, at a minimum, a substantial political liability. Moreover, Mrs. Clinton's representation of Madison Guaranty could have been a civil liability for Mrs. Clinton and the Rose Law Firm.

Rose, and in particular Webster Hubbell, also represented Madison Guaranty and its conservators, the FDIC and the RTC, beginning in 1989. Hubbell concealed numerous potential conflicts of interest from the FDIC and RTC during that representation. That representation and Hubbell's acts of concealment are discussed in Chapter 2 of this Part. Hubbell eventually pleaded guilty to a felony for those acts.

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When Governor Clinton ran for president in 1992, Mrs. Clinton's representation of Madison Guaranty, including how the representation had come about, became matters of public inquiry. At that time, Madison Guaranty had failed, a failure that ultimately cost the American tax payers about $73 million. Mrs. Clinton and the Clinton campaign made public statements regarding her representation that minimized her role.

After 1993, the conduct of insiders at Madison Guaranty and the Rose Law Firm became the subject of multiple federal investigations. The RTC investigated whether insiders had committed criminal acts, and also examined whether the agency had viable civil claims against any insiders or professionals who had represented Madison Guaranty, including the Rose Law Firm. Also, the FDIC and RTC investigated whether Rose attorneys had concealed potential conflicts of interest from the agencies. The FBI and the United States Department of Justice also conducted criminal investigations of the conduct of the Madison Guaranty insiders and others, including Rose attorneys, who had been associated with the institution. Beginning in 1994, those investigations were continued by this Office.

In the course of the federal investigations, Mrs. Clinton made numerous statements and gave sworn testimony regarding her representation of Madison Guaranty. This Office investigated whether Mrs. Clinton had committed perjury, made false statements, or obstructed justice during those investigations. The Independent Counsel concluded that there was insufficient evidence to prove beyond a reasonable doubt that Mrs. Clinton had committed any federal criminal offense. While the evidence did show that some of Mrs. Clinton's statements had been factually inaccurate, the evidence did not establish beyond a reasonable doubt that she

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knew that they were factually inaccurate when she made them.

This Chapter details the results of the investigation of Mrs. Clinton's statements regarding her representation of Madison Guaranty and the origin of that representation.

II. ANALYSIS

A. Madison Guaranty Hired Rose.

In April 1985, Madison Guaranty retained the Rose Law Firm, and that relationship continued until July 1986, when the federal regulators removed the McDougals from Madison Guaranty and Mrs. Clinton terminated the retainer. The circumstances leading to Rose's being retained were later disputed by the individuals involved -- Jim McDougal stated that he hired Rose and Mrs. Clinton as a favor to Governor Clinton, while Mrs. Clinton stated that Madison Guaranty hired Rose because a Rose associate, Rick Massey, was a friend of Madison Guaranty's president, John Latham.

The circumstances of Rose's being retained by Madison Guaranty were investigated by numerous federal bodies, including this Office, the FDIC, the RTC, and Congressional committees. The FDIC and RTC investigation included determining whether Madison Guaranty's retaining Rose had been proper, or whether it had caused any losses to the institution. This Office's investigation included determining whether anyone had committed perjury, made a false statement, or obstructed any federal investigation.

The principals involved in the retention disagreed as to how it came about. Jim McDougal said he hired Rose as a favor to Governor Clinton. Mrs. Clinton said Rick Massey brought in the work and her only role was to collect on an old bill still owed by Madison Bank

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and Trust, McDougal's other institution. President Clinton said he could not remember asking McDougal to give his wife business, but did not say that McDougal's recollection was false. Massey testified he did not remember bringing Madison Guaranty to Rose, asking Mrs. Clinton to act as billing partner, or discussing McDougal's unpaid bill. Massey said that when partner David Knight had asked Latham for business, Latham said he wanted to give Knight and Massey the business, but Jim McDougal hired Madison Guaranty's lawyers. Latham said McDougal was satisfied with Madison Guaranty's principal counsel, Mitchell Williams, which was the firm of Jim Guy Tucker, McDougal's long-time friend and business partner.

Documents establish that some of Mrs. Clinton's statements were factually inaccurate. Mrs. Clinton stated that in April 1985, Rick Massey tried to bring Madison Guaranty to Rose as a client, but was told by some partners that he could not do so until McDougal agreed to pay the outstanding bill owed to Rose by Madison Bank and Trust. Mrs. Clinton stated that on April 23 she arranged for McDougal to have the old bill paid so that Massey could bring Madison Guaranty in as a client. That statement was factually incorrect. The evidence uncovered by this Office conclusively established that the old bill had been settled in October 1984, six months before Mrs. Clinton's supposedly having arranged for it to be paid. In October 1984, Madison Bank and Trust paid $5,000 of the outstanding balance of $5,893. Rose never attempted to collect the remaining $893, and Madison Bank and Trust never paid it; the understanding was apparently that the $5,000 payment was a final settlement of the debt.

Although the evidence thus conclusively established that Mrs. Clinton's statements had been to some extent factually inaccurate, the Independent Counsel concluded that the evidence

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did not establish beyond a reasonable doubt that Mrs. Clinton knew the statements were factually inaccurate when she made them.

1. McDougal's Account of Madison Guaranty's Retention of Rose.

Jim McDougal said Rose hired Madison Guaranty after Governor Clinton jogged by Madison Guaranty early one morning in August or September 1984, and sat in a new leather chair in McDougal's office, leaving a sweat stain. Governor Clinton had complained about Mrs. Clinton's earnings at Rose. McDougal offered to send her some legal work, putting Rose on retainer of $2,000 per month. Mrs. Clinton came by McDougal's office later that day to finalize the arrangement.

McDougal's version of events -- sometimes called the "jogging incident" -- was first reported by the national media during the 1992 Presidential campaign. McDougal related the incident to Jeff Gerth, but it was excluded from Gerth's initial article by his editors. But other articles soon reported McDougal's story within the next few weeks, and Madison Guaranty's hiring of Rose became a campaign issue.

McDougal's initial statements to the press during the '92 campaign were consistent with his later sworn testimony and statements to this Office about the retainer. There were some inconsistencies in the details of McDougal's recollection, and McDougal conceded at his 1996 criminal trial that his memory of the specifics of the jogging incident may have become jumbled.[1735]

[1735] Tr. at 7299, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark. May 8, 1996) (testimony of James McDougal) ("I've been asked about it so many hundreds of times, it's

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McDougal's statements can be summarized as follows:

Regarding the time that the jogging incident happened, McDougal said Governor Clinton jogged to McDougal's office between 6:00 a.m. and 7:00 a.m. one morning near the end of August, or the first part of September 1984, but before Madison Bank & Trust's September 25 board meeting.[1736] McDougal said he and Susan McDougal's brother Bill Henley were at the office early to catch up on abstracting and title work:[1737]

> I remember it was very early in the morning, or early for office hours, probably about 6:30. My brother-in-law and I were down at the office trying to catch up on the paperwork because we were running such a huge volume of sales at these various subdivisions. And we were in there very early, and the governor came by obviously jogging. He was wearing jogging clothes and was -- you know, it was hot weather. He was sweating.[1738]

McDougal placed the date of the jogging incident using three events: 1) he said it happened soon after he received a leather chair, which Susan McDougal gave him as a birthday gift on August 25, 1984;[1739] 2) McDougal said it happened four to five months before Rose did work for Madison Guaranty in front of the Arkansas Securities Department -- work Rose started

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running together in my mind in terms of specifics").

[1736] J. McDougal 4/2/97 GJ at 97, 108-09; J. McDougal 8/96-6/97 Int. at 9-10. McDougal testified that the jogging incident could have occurred even earlier: "[I]t was pretty hot weather . . . . I thought it was in the summertime, but I'm basing that on the profuse amount of sweat he left on my chair." Tr. at 7299, 7304, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark. May 8, 1996) (testimony of James McDougal). McDougal did not remember the exact date of the jogging incident. J. McDougal 4/2/97 GJ at 100.

[1737] Tr. at 7298, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark. May 8, 1996) (testimony of James McDougal); J. McDougal 8/96-6/97 Int. at 9.

[1738] J. McDougal 4/2/97 GJ at 97.

[1739] J. McDougal 8/96-6/97 Int. at 10.

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April 23, 1985;[1740] and (3) McDougal said it happened before an April 5, 1985 fundraiser McDougal hosted for Governor Clinton at Madison Guaranty.[1741]

McDougal said he was annoyed when Governor Clinton stained his chair because McDougal had just received it as a birthday gift from his wife.[1742] McDougal described the event to the grand jury in 1997:

> I had this new chair that Susan had just given me that was expensive because it was designed to take care of a back problem. And he plopped down in that chair, and when he got up, the outline of his body was there in sweat.[1743]

On how the topic of Rose's and the Clintons' finances came up, McDougal said he casually asked Governor Clinton how things were going, and Governor Clinton responded that something at Rose had decreased Hillary's earnings:

> Well, I think we had . . . just the general polite conversation you usually have among friends, you know. But when I said, "How are y'all doing," he said that they weren't doing too well because they had run into some kind of big expense at the Rose Law Firm which had cut down on Mrs. Clinton's income. I don't remember what it was.[1744]

[1740] Id. at 11.

[1741] Id.

[1742] Id. at 10; J. McDougal 4/2/97 GJ at 99:

Q. Now, at some point, have you made a statement that the President actually sweated on your new chair?

A. Well, that's why it kindly burned at my mind, because the chair was brand new and he was sweating pretty profusely. So when he got up, I had a salty outline of Bill Clinton on my new chair.

[1743] J. McDougal 4/2/97 GJ at 99; see also Tr. at 7299, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark. May 8, 1996) (testimony of James McDougal).

[1744] J. McDougal 4/2/97 GJ at 98; see also J. McDougal 8/96-6/97 Int. at 9 ("McDougal could not recall how they got onto the topic of Clinton's finances. McDougal speculated that he may have just asked Clinton how things were going and then Clinton told him about the cutbacks

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McDougal said he asked Governor Clinton if it would help if Madison Guaranty sent work to Hillary,[1745] and agreed to when Governor Clinton said yes.[1746] At his 1996 criminal trial, McDougal testified that after hearing about Rose's problems, "I said to Bill something to the effect of, 'We're needing more legal work. Would it help Hillary if we gave some of the work to the Rose firm?' And he said yes."[1747]

On the $2,000 monthly retainer, McDougal said though he had never paid a retainer, he suggested the retainer and the $2,000 monthly amount when he spoke with Mrs. Clinton after the meeting with Bill Clinton.[1748] McDougal also remembered telling John Latham, then president of

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at the Rose Law Firm"). McDougal did, however, at one point suggest that Governor Clinton, not McDougal, initiated the conversation about financial problems. J. McDougal 6/22/95 Int. at 6-7 ("Clinton came in claiming he had financial problems"). When asked about the notes from his 1995 interview during his 1996 criminal trial, McDougal said the notes were wrong: "[Governor Clinton] did not specifically raise the question of needing money or elaborate beyond responding to what I asked him. . . . I did not say [in the '95 interview] that Clinton came in claiming he had financial problems." Tr. at 7300-02, United States v. McDougal, et al., No. LR-CR-95-173 (E.D. Ark. May 8, 1996) (testimony of James McDougal); see also Rempel Frantz, Fallout from Collapse of S&L Shadows Clinton, L.A. Times, Nov. 7, 1993, at A17 (McDougal quoted saying, "I hired Hillary because Bill came in whimpering they needed help").

[1745] J. McDougal 8/96-6/97 Int. at 9. McDougal says Madison Guaranty's retainer of Rose had nothing to do with the Clintons' needing money to meet any obligation related to Whitewater. Id. at 12.

[1746] J. McDougal 6/22/95 Int. at 7; J. McDougal 8/96-6/97 Int. at 9.

[1747] Tr. at 7298, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark. May 8, 1996) (testimony of James McDougal); see also J. McDougal 4/2/97 GJ at 98 ("And I said, 'Would it help Hillary if we gave her some of this legal work,' and he said, 'Yes'").

[1748] J. McDougal 8/96-6/97 Int. at 10; J. McDougal 4/2/97 GJ at 98-99 (McDougal did not agree with Governor Clinton on the amount of the retainer). But see Rempel Frantz, Fallout from Collapse of S&L Shadows Clinton, L.A. Times, Nov. 7, 1993, at A17 ("I asked him how much he needed, and [Governor] Clinton said 'about $2,000 a month,' McDougal said"); J. McDougal 8/96-6/97 Int. at 10 ("McDougal could not initially recall whether he or Hillary

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Madison Guaranty, to write a $2,000 check to Rose the same day as McDougal's meeting with Mrs. Clinton.[1749] McDougal could not explain why Rose's first retainer check was issued in May 1985, rather than the fall of 1984.[1750]

Finally McDougal said Mrs. Clinton came to Madison Guaranty about an hour after Bill Clinton.[1751] Mrs. Clinton said Bill Clinton sent her:

> Q. And [after Bill Clinton's visit] did you then talk to Mrs. Clinton?
>
> A. Yes, sir. She came by, I would say, about between 8:00 and 8:30. It was before the opening of business. She came by and said, "Bill asked me to stop, said you wanted to visit about some legal work or whatever."
>
> Q. And did you agree with her to give her and the Rose Law Firm some legal work?
>
> A. Yes, sir.
>
> Q. And was this as a result of the President . . . or the governor at the time and you having a conversation earlier in the day?
>
> A. Yes, sir.[1752]

Clinton came up with the $2,000 per month figure").

[1749] J. McDougal 8/96-6/97 Int. at 10 ("On the same day as Hillary Clinton's visit, McDougal requested Latham to prepare a $2,000 check to Rose for the first month's retainer. McDougal never saw the check that he instructed Latham to prepare. If Latham did not prepare the check on the day of Hillary Clinton's visit, then Latham failed to follow his instruction").

[1750] Id. at 11 ("McDougal was informed that the first retainer check to Rose was not issued until May 2, 1985. McDougal thought the checks should have started the same day as [Hillary] Clinton's visit which McDougal thought was in approximately September 1984. McDougal could not explain why he thinks the retainer was in September 1984 and yet no checks were issued to the Rose Law Firm until May 1985").

[1751] Id. at 9.

[1752] J. McDougal 4/2/97 GJ at 99.

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McDougal said he told Mrs. Clinton he needed her help on some real estate abstract work.[1753] McDougal said the meeting with Mrs. Clinton lasted about five minutes, and Mrs. Clinton left Madison Guaranty before 8:30 a.m.[1754] McDougal said that day was the last time he remembered actually meeting with Mrs. Clinton.[1755]

2. Evidence Reflecting on the Accuracy of McDougal's Version.

a. Mrs. Clinton's Income.

Tax records showed Mrs. Clinton's Rose income dropped from 1983 to 1985, consistent with McDougal's testimony that Governor Clinton told him Mrs. Clinton's Rose earnings had fallen. The Clintons' tax returns for 1983-85 show the following earnings for Mrs. Clinton at Rose:

Year	Wages from Rose
1983	$ 82,741[1756]
1984	$ 72,989[1757]
1985	$ 55,382[1758]

[1753] J. McDougal 8/96-6/97 Int. at 10.

[1754] Id. ("McDougal was fairly certain that Hillary Clinton left just prior to 8:30 a.m. because he wanted to introduce Hillary Clinton to John Latham who had not yet arrived to work. Latham arrived shortly after Hillary Clinton left").

[1755] McDougal did remember speaking to Mrs. Clinton by phone in 1986 about a proposed brewery. Id. at 13.

[1756] Tax Return and W-2 Statements for William J. and Hillary R. Clinton (1983) (Doc. No. DEK001329).

[1757] Tax Return and W-2 Statements for William J. and Hillary R. Clinton (1984) (Doc. No. DEK000753).

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b. Others' Statements about McDougal's Account.

President Clinton -- President Clinton testified he had been to Madison Guaranty "[l]ess than 10 times, more than two, three"[1759] and agreed that while jogging by Madison Guaranty he had "once or twice actually went in."[1760] When asked about the jogging incident, President Clinton said he had "tried to remember" and was not accusing McDougal of lying, but he did not remember it: "I don't recall that. I am aware that he has recounted a conversation about that. But I don't have any specific recollection of doing that."[1761] President Clinton said he did not remember asking McDougal to send Mrs. Clinton legal work.[1762] President Clinton also said he did not remember complaining to McDougal about finances or saying "Hillary and I need some money."[1763] The President was asked whether he thought McDougal was lying:

> Q. Do you have any reason to believe that Jim McDougal is not being truthful--
>
> A. No.
>
> Q. -- about [the jogging incident]?
>
> A. I have absolutely -- I have no reason to believe that. And I have really tried to search my memory to see if there was anything remotely similar to what he said. I mean, I really tried to remember the conversations that I've

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[1758] Tax Return and W-2 Statements for William J. and Hillary R. Clinton (1985) (Doc. No. DEK001371).

[1759] W. Clinton 4/22/95 Depo. at 66.

[1760] Tr. at 70, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark. Apr. 28, 1996) (testimony of William J. Clinton).

[1761] W. Clinton 4/22/95 Depo. at 67. President Clinton testified, "I don't recall that I did know [in 1985 that Hillary was doing some work for Madison Guaranty]. Normally Hillary didn't discuss her legal work with me." Id. at 65-66.

[1762] Id. at 69.

[1763] Id. at 72.

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had with him to try to figure it out, because I am not accusing him of not telling the truth. I do not ... I simply do not remember the conversation he says occurred. [1764]

President Clinton gave similar testimony in 1996 for the McDougals' and Governor Tucker's criminal trial:

Q. And you are aware, sir, that Mr. McDougal has a recollection of an event in which you jogged by and asked Mr. McDougal to place Ms. Clinton's law firm on a retainer. Do you remember that, sir? I'm saying, do you remember that that's one of Mr. McDougal's recollections?

A. I remember that -- I am now aware that Mr. McDougal remembers that I asked -- I believe he has testified that he thought I asked him to give Hillary some law business, I don't know about a retainer.

Q. And you're now aware that Mr. McDougal remembers that event occurring and you don't remember it; is that correct, sir?

A. I remember going in to see him. I do not remember asking him to do that, no.

Q. Okay. But you don't recall asking him to place Ms. Clinton on a retainer; is that correct?

A. I do not, no.

Q. You don't recall -- do you recall asking him to give her a specific amount per month in reference to that retainer?

A. No, I don't.

Q. Do you recall any -- you say you remember going in to see him. Do you remember going in to see him and discussing Ms. Clinton and law business for Madison Guaranty Savings & Loan?

A. I do not.

[1764] Id. at 83.

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Q. Is there any -- I just want to make sure I'm asking you the right question, I'm not asking you a question that you don't understand. Is there any combination of facts that I can ask you that comes anywhere close to what Mr. McDougal recalls as far as that particular conversation is concerned?

A. Well, I don't remember the specific request. You know, we spoke in passing about a lot of things over the years. I don't know whether he asked me, "How is Hillary doing," "How are we doing[.]"[1765]

Bill Henley -- Susan McDougal's brother Bill Henley supported aspects of Jim McDougal's testimony. McDougal said Henley had been at the office when the jogging incident occurred.[1766] Henley testified that one morning between 6:30 a.m. and 8:30 a.m. he met McDougal at Madison Guaranty.[1767] The door to McDougal's office was closed, so Henley waited about fifteen minutes. Henley said Governor Clinton, in jogging clothes and sweating, left McDougal's office. Henley and Governor Clinton said hello, and Governor Clinton left. Henley said that once Governor Clinton was gone, McDougal commented, "I don't mind the son of a bitch coming by here and taking up my time, but I wish he wouldn't sweat through my chairs."[1768] Henley said he and McDougal went into McDougal's office. Henley noticed a fresh sweat stain on one of the two chairs facing McDougal's desk.[1769]

Henley said the only conversation he had with McDougal about the jogging incident was

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[1765] W. Clinton 4/28/96 Depo. at 119-20, United States v. McDougal et al., No. LR-CR-95-173 (E.D. Ark. Apr. 28, 1996).

[1766] J. McDougal 6/22/95 Int. at 7 ("McDougal advised that Bill Henley was present during this meeting"); J. McDougal 8/96-6/97 Int. at 9 ("Bill Henley was also present in McDougal's office when Clinton came by in jogging attire").

[1767] W. Henley 6/18/96 GJ at 24.

[1768] Id. at 27, 50.

[1769] Id. at 46-47.

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at the McDougals' and Governor Tucker's 1996 criminal trial.[1770] McDougal told Henley that he did not refer to Governor Clinton as a "son of a bitch," as a recent book seemed to indicate Henley had stated.[1771]

Henley remembered one detail not consistent with McDougal's statements. Henley thought that McDougal's secretary, Sue Strayhorn, was sitting at her desk outside McDougal's office when the jogging incident happened.[1772] If true, this would contradict McDougal on the date of the incident, because Strayhorn started at Madison Guaranty in February 1985, after McDougal said the incident happened.[1773] Henley could only place the incident as sometime in 1984 or 1985.[1774]

Susan McDougal -- Jim McDougal was certain he discussed the jogging incident with Susan McDougal.[1775] She refused to give a statement to this Office, and spent eighteen months in

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[1770] Id. at 50

[1771] Id. at 50-51.

The quote in the book read:

> McDougal gently steered [Clinton] out of the office. Susan's brother Bill Henley was standing nearby. With the governor safely out of earshot, McDougal turned to Henley. "I don't mind the fat little son of a bitch coming by and taking up my time. I just wish he wouldn't ruin my chair."

James B. Stewart, Blood Sport 124 (1996).

[1772] W. Henley 6/18/96 GJ at 24, 30.

[1773] Strayhorn 3/30/94 Int. at 1.

[1774] W. Henley 6/18/96 GJ at 33. Just as McDougal had, Henley also testified he thought the event happened in the "summertime," because Clinton was sweating and it must have been hot. Id. at 33-34.

[1775] J. McDougal 8/96-6/97 Int. at 10-11; J. McDougal 4/2/97 GJ at 103-04:

Q. Susan was also quoted in the Washington Post and other publications, I

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jail for contempt because she refused to testify pursuant to a grand jury subpoena, even after being given immunity. She did give statements to print and television media that agreed with Jim McDougal. In March 1992 the Washington Post quoted Susan McDougal saying:

> Hillary came in one day and was telling us about the problem. The problem was finances, her finances. . . . She came to Jim's office. I remember Jim laughing and saying afterward, 'Well, one lawyer's as good as another, we might as well hire Hillary.' . . . She was on retainer. I remember everyone sitting around laughing and saying: 'We need to hire Hillary Clinton.'[1776]

Susan more closely corroborated Jim's story in a 1996 television interview:

> Q. There are things that you can help clear up a little bit from -- for some of us. The decision to have Mrs. Clinton help with some of the legal affairs for Madison Guaranty.
>
> A. I'll tell you what I know about it. As I wasn't present at the time. But I do know that Bill came by the bank one day. He was jogging. And . . . sweating. The famous story of the sweat in the chair I didn't see that. But I did see that he was running, and he was sweating. And he came by the bank. And he did talk with Jim. After that, Jim came to me and said, I've just given Hillary some work from the bank. Is that all right with you? I was at the bank that day.
>
> . . . .
>
> Q. And did he say then that -- that Mr. Clinton had asked for her?
>
> A. What he said was, she needs the work. And I said, that's fine with me.

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think, saying, "Yes, I know about this." Do you recall talking to her about this? Would that have been something you would have told her about?

A. I'm sure I -- yes. It would have been something I would have told her within the business day, I would think.

[1776] Maraniss & Weisskopf, Lawyer Will Review Arkansas Land Deal, Wash. Post, Mar. 12, 1992, at A1. In an interview with the Independent Counsel's Office, Jim McDougal was read Susan's quote from the Washington Post. McDougal agreed with Susan McDougal's statement but added that either Bill Henley or he must have told her about the jogging incident. J. McDougal 8/96-6/97 Int. at 10-11.

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Those were his exact words. At that time, at that day, she needs the work. And I said, that's fine, Jim.

Q. Because, again, she has talked about the business coming in a different way -- coming through a connection between someone who was in her office and someone who knew your husband.

A. I don't know about that.

Q. But this you do know? It did take place?

A. Oh, yes.[1777]

On the eve of being incarcerated for refusing to discuss these subjects with the grand jury, Susan told talk show host Larry King she did not witness the jogging incident and her only knowledge came from Jim:

> I only know that Jim came to me and said, "They need the money. I'm going to give her the work. Is that all right with you?" And I said yes. That's all I know about how that came to be.[1778]

John Latham -- Latham said although he was Madison Guaranty's president, Jim McDougal hired the attorneys.[1779] Latham said McDougal never mentioned the jogging incident to him.[1780]

Rae Ann Moles -- Madison Guaranty hired Moles in April 1983 to perform clerical

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[1777] Prime Time Live: Tr. of Diane Sawyer Interview of Susan McDougal at Doc. Nos. 2053-000000069 through 72 (ABC television broadcast, Aug. 30, 1996) (transcript contains additional interview portions not included in the public broadcast).

[1778] Larry King Live (CNN television broadcast, Sept. 6, 1996) (videotape).

[1779] Latham 2/14/95 Int. at 1; Latham 5/15/96 Senate Banking Comm. Depo. at 12-13; Senate Whitewater Comm. Hearing, supra note 147, at 14-15 (May 16, 1996) (testimony of J. Latham).

[1780] Latham 2/14/95 Int. at 2; Latham 5/15/96 Senate Whitewater Comm. Depo. at 18.

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work.[1781] Moles said that late one afternoon in August or September 1984, Governor Clinton rushed into Jim McDougal's office wearing jogging clothes, and she heard most of their conversation because McDougal's office door was open.[1782] McDougal complained to Governor Clinton that they - the Clintons - needed to pay their fair share on a Whitewater loan.[1783] Governor Clinton told McDougal that Webb Hubbell was telling Rose attorneys to get more savings and loan business, and asked McDougal to put Mrs. Clinton on a $2,000 per month retainer.[1784] Moles said McDougal told Clinton "he really didn't have anything for the Rose Law Firm to do [and] that the Mitchell law firm was representing the institution and performing as he expected."[1785] Moles said McDougal asked Clinton how Rose would credit the new business, and Clinton said Hubbell would likely credit a young associate for the business.[1786]

Moles said Clinton and McDougal met for over an hour and a half and she left before the meeting ended.[1787] Moles said when she came to work the next morning, Jim McDougal said, "Well, we've put Hillary on the payroll. Susan will be in shortly. She doesn't know about it.

[1781] Moles 8/4/94 & 2/9/95 Int. at 3.

[1782] Moles 10/19/95 GJ at 18. But see Moles 8/4/94 & 2/9/95 Int. at 7 ("McDougal had Moles into his office and he introduced her to Clinton").

[1783] Moles 8/4/94 & 2/9/95 Int. at 8.

[1784] Moles 10/19/95 GJ at 22 ("Mr. Clinton asked him to hire the Rose Law Firm"); Moles 8/4/94 & 2/9/95 Int. at 8 (uppercase in original) ("CLINTON said that he and HILLARY CLINTON were in need of some money and because he was a government servant, he only made so much. CLINTON then asked McDOUGAL to have MGSL put HILLARY RODHAM CLINTON of the ROSE LAW FIRM on a $2,000 per month retainer").

[1785] Moles 10/19/95 GJ at 22.

[1786] Id. at 24.

[1787] Id. at 26

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When I tell her, she's going to be really upset. There may be quite an incident. If you get uncomfortable, go downstairs."[1788] Moles asked Jim McDougal if Madison Guaranty was going to split the legal work between Mitchell Williams and Rose, and McDougal responded, "You are to send the Rose Law Firm nothing."[1789]

Moles' testimony was partly corroborated by her sister, Sarah Handley, a former financial examiner for the Arkansas Securities Department. Handley testified that her sister told her "Clinton had come by [Madison Guaranty] and that at the conclusion of that visit, . . . McDougal had retained Hillary, the Rose Law Firm."[1790]

R.D. Randolph -- Jim McDougal said he might have told R.D. Randolph about Governor Clinton's sweating in his chair.[1791] Randolph testified that he remembered McDougal telling him about retaining Mrs. Clinton, but not about the jogging incident.[1792]

3. Mrs. Clinton's Version.

Mrs. Clinton has made numerous statements about Madison Guaranty's hiring Rose. During the 1992 campaign, Mrs. Clinton drafted a statement contradicting Jim McDougal's press statements. Her statement was never released. In April 1994, Mrs. Clinton discussed the issue at a press conference. Mrs. Clinton gave several more statements on the subject to federal investigators after that press conference.

[1788] Id.

[1789] Id. at 27.

[1790] S. Handley 10/31/95 GJ at 22.

[1791] J. McDougal 8/96-6/97 Int. at 12.

[1792] R.D. Randolph 9/17/96 GJ at 69-70.

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Mrs. Clinton's version of how Madison Guaranty hired Rose was essentially as follows. In the spring of 1985, Rose associate Rick Massey, a friend of Madison Guaranty president John Latham, spoke with Latham about Madison Guaranty sending legal work to Rose. Latham agreed, but partners at Rose were opposed. McDougal's Madison Bank and Trust still had an outstanding bill for work Rose had done in 1981-82. The partners did not want Rose to do any work until the old bill was paid. Massey knew that Mrs. Clinton knew Jim McDougal, and asked her to help get the bill paid. Mrs. Clinton spoke with several Rose partners who said if McDougal paid the old bill, and paid new fees in advance, Massey could do the work. Mrs. Clinton saw McDougal on April 23, 1985, and told him Rose would not let Massey work until his old bill was paid and a prepayment arrangement was agreed to. McDougal agreed to the retainer and paid the old bill. Massey asked Mrs. Clinton to act as billing partner on the account because she helped him retain the business.

The following discussion sets forth Mrs. Clinton's statements regarding Madison's retention of Rose.

a. Mrs. Clinton's Unsworn Statements.

Mrs. Clinton drafted her most detailed statement about Rose's retention by Madison Guaranty during the 1992 campaign.[1793] It read:

> Jim McDougal became a client of the Rose Law Firm in 1981. He engaged the firm for a matter ~~related to litigation~~ arising out of the decision to move the Bank of Kingston. At the conclusion of the representation 198_, Mr. McDougal disputed the amount of his final bill and refused to pay [in] the entire amount requested.

[1793] H. Clinton 1/26/96 GJ at 53-55.

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In March or April of 1985, Rick Massey, an associate of the firm began talking with John Latham, the CEO of Madison Guaranty S & L, and a friend of Massey's, about some legal work Latham wanted Massey to do for Guaranty. In April of 1985, Massey went to the partners in the securities section and asked if they would help him with the work Latham wanted him to do. They advised him that the firm could not do any further work for McDougal until he paid the bill he owed for the previous work and that, even if he did, the firm could not permit Massey to do any work unless McDougal agreed to pay a monthly advance against which fees and expenses could be billed.

Massey also discussed the situation with one of the litigation partners who had worked on McDougal's previous work and who gave Massey the same advice. Massey then came to see me because he knew that I knew McDougal; he explained his interest in working with Latham on the project and asked if I had any ideas about what he could do. After talking with Massey, I told him I would talk with McDougal for him and see if McDougal would be willing to pay his past due bill and agree to stay current on any fees and expenses incurred for the new project.

On April 23, 1985, I called McDougal and asked if I could drop by to see him at his office. When I visited him, I told him that I understood Latham wanted Massey to do some work for them, but that our firm would not let Massey proceed until the previous bill was paid. McDougal called Latham into the meeting and asked Latham if he wanted Massey to do the work. As I recall, Latham explained that he and Massey had met already to discuss the matter and he wanted to engage Massey. After that explanation, McDougal told Latham he could proceed with Massey, and he told me that he would arrange to pay the past due bill.

I reported this conversation to my partners and Massey. The securities partners who supervised Massey advised Massey that a two thousand dollar per month advance against fees and expenses would be appropriate. They asked me to convey that to McDougal. Massey and I called McDougal, but he was not in so we talked with Latham and another employee. Latham told Massey and me he was sure that amount would be acceptable, but would have to chec[k] with McDougal to confirm. Latham later advised me they agreed, but they would not make their first payment until May. During the first week or so of Massey's work for Madison, he kept me advised because he wanted me to be aware of what he was doing in case he had any trouble being paid for his work. On a few occasions he showed me drafts of documents he was preparing under the supervision of securities partners so that I would be prepared to intervene with McDougal if necessary on the issue of payment. Since I had negotiated the firm's payment, I

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also asked to send the bills to McDougal.

I also placed a call to the Securities Commissioner to ask for information; I do not recall talking to her (as she independently does not recall talking to me) but I may have called her or someone in her office, to ask the person to whom I spoke who in the office handled matters related to s&ls since I knew that the office had very little supervisory authority since most of their authority related to brokers. I was advised to send anything to the Commissioner. I relayed that information to Massey.

Massey has stated he does not know why he included my name in the letter to the Securities Commissioner, and I do not know either and do not recall ever seeing it before it was sent. I also do not recall receiving the letter addressed to me from the Commissioner, because if I had seen it I would have immediately sent it to Massey. Massey has said his secretary may have included my name in error; that is understandable since I was listed as the billing attorney because of my intervention with McDougal. I realized no financial benefit from that listing; it was done as an accommodation to Massey and the firm.

In addition to the matter Massey did for Madison, the firm did two other matters that were unrelated to the state. [T]he [sic] total billed for all matters was 21,202.25.

As I have said repeatedly, I did not have any substantive involvement in the work our firm did for Madison that involved the Securities Commissioner. I did not discuss the merits of the matter with the Commissioner or anyone in her office. I can see how in retrospect I should not have become involved at all in helping Rick Massey work out the problems he encountered, but I knew I was not attempting to influence anyone other than McDougal whom we wanted to pay his bill. I have practiced law in Arkansas for nineteen years and so far as I know this is the only question that has ever been raised about even the appearance of conflict between my practice and my husband's official positions. I regret that this incident could be misconstrued by anyone and would only point to my record and to the results in this case in which clearly the Commissioner's actions do not suggest any influence or attempt to influence her by me or anyone in my firm.[1794]

[1794] H. Clinton Campaign Statement (1992) (Doc. Nos. DEK200962 through 200963) (strikethrough in original). In July 1997, a copy of Mrs. Clinton's statement, among other things, was found in a brief case in the attic of Vince Foster's home. The copy had numerous handwritten changes. Mrs. Clinton testified that the writing on the document was Foster's and that he and she had worked together on the document. H. Clinton 4/25/98 Depo. at 28-30.

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In a press conference held April 22, 1994, Mrs. Clinton said the following:

> There was a very bright, young associate in our law firm who had a relationship with one of the officers at Madison Guaranty, a young man whom he had known. They began talking . . . . Those two young men thought that it would be legal under Arkansas law for a savings and loan to issue preferred stock, but there was absolutely no law on that. And so they couldn't be sure. But they decided that what they wanted to do was to ask the person who regulated savings and loans whether it was legal, not if Madison Guaranty could do it . . . .
>
> When they talked about doing that, the young attorney in question needed a partner to serve as his backstop, and that was one of the rules we had in our firm. He knew that I knew Jim McDougal. He also knew that Jim had been a client of our firm in the past. This was not a new representation. So he came to me and asked me if I would talk with Jim to see whether or not Jim would let the lawyer and the officer go forward on this project. I did that, and I arranged that the firm would be paid a $2,000 a month retainer. And that was ordinary and customary. That would be billed against . . . . That was arranged. The young attorney, the young bank officer did all the work, and the letter was sent. But because I was what you call the billing attorney, in other words I had to send the bill to get the payment made, my name was put at the bottom of the letter. It was not an area that I practiced in. It was not an area that I really know anything to speak of about.[1795]

b. Statements to Federal Investigators.

i. Mrs. Clinton's April 1995 Deposition.

This Office deposed Mrs. Clinton at the White House, on April 22, 1995, which was before the Office obtained her billing records in January 1996. Mrs. Clinton gave the following

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Investigators later discovered another document that was archived on Rose computer systems: a draft, created by Vince Foster, that was Mrs. Clinton's statement with Foster's handwritten changes typed in. In 1998, Mrs. Clinton acknowledged Foster's editing of her statement. H. Clinton 4/25/98 Depo. at 30-31.

[1795] Statement of Hillary R. Clinton, Press Conference, Federal News Service (Apr. 22, 1994).

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sworn testimony:

A. At some point in 1985, in the spring, an associate with our firm by the name of Rick Massey made it known in the firm that he was interested in doing some work with Madison Guaranty, and particularly with a young man that he knew there named John Latham, who was an officer at Madison.

As I have tried to remember and reconstruct this, Rick Massey raised that with the partners in the securities department of our firm, and was told that Mr. McDougal who was at Madison Guaranty had an outstanding bill that he had not paid for previous legal work done by our firm on his behalf. And Mr. Massey consulted broadly with a number of partners, and was advised that he could not go forward unless the past due bill was paid.

At some point Mr. Massey came to see me because he knew that I knew Jim McDougal and asked if I had any ideas about how he could get the bill paid that was pending, so that he could then go forward to try to do this work on behalf of Madison Guaranty. I discussed it with several partners and they all said, well, if McDougal pays the bill, then we will consider letting Massey do the work.

At some point I talked with Jim McDougal and told him that Rick Massey had an interest in doing some work for Madison Guaranty with John Latham, but that the firm would not let Rick do it unless his previous bill was paid. And then at some point after that McDougal paid the money that he had owed the firm for a number of years. Massey then was told that he could proceed with the work.

Massey came to me and asked if I would be the billing partner since I had helped him by getting the past due bill paid, and I told him that I would.

But the firm decided, unlike most of our clients where we do not have any retainer arrangement, that because of the previous experience with Mr. McDougal, Madison Guaranty would be asked to pay in advance against fees and expenses of a monthly amount, and the firm decided $2,000 would be fair. Mr. McDougal was told that. He agreed. And so the $2,000 was deposited . . .

And then at some point Mr. Massey began work and the retainer was paid.

Q. So, from your standpoint, whose idea was the figure of $2,000 a month?

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Who came up with that figure?

A. I don't have any idea.

Q. Was it as betwixt McDougal and somebody in the Rose Law Firm?

A. I don't have any idea.

Q. When you say that Mr. Massey would have talked with partners, are you talking about partners in the securities section of your firm?

A. I would assume, yes.

Q. Can you recall here today any partner at the Rose Law Firm whose name you can give us that would confirm that?

A. Well, I know that I talked with Vince Foster about it -- I cannot tell you who Rick Massey talked with -- because Mr. Foster had been one of the lawyers who had done the work that Mr. McDougal had not paid for. And so before I did anything to help Rick Massey, I talked with Mr. Foster to be sure that he thought it was appropriate that we try to collect this past due bill, with the idea that if we did Mr. Massey would then be able to represent Madison.

. . . .

Q. Let's go then to this matter of how it started. Do you know any reason why Rick Massey would say that he does not think he brought any business into the Rose Law Firm like this?

A. No, I do not.

Q. Do you know whether or not the supposed back money that was owed was ever paid?

A. I assume it was paid. I can't tell you that for sure. I don't know for sure, but I assume it was since that was the reason that Rick Massey came to me, and he was then permitted to go forward.

Q. Did you ever see any back bill that supposedly he owed?

A. No.

. . . .

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Q. And, again, I believe you stated the reason you were going to be the billing partner was because you knew Mr. McDougal? Is that correct?

A. Well, I knew him and I had been enlisted to try to help get the bill paid, to clear the way for Mr. Massey to represent Mr. McDougal. And as an accommodation to Mr. Massey, I agreed to be the billing attorney on the matter that he was going to handle.

Q. On the front end, were you to be anything other than the billing attorney? In other words, were you supposed to do any legal work for Madison Guaranty yourself?

A. Not that I can think of right now. I was supposed to be the billing attorney because an associate could not represent a client without a partner as a billing attorney.

Q. Would you say that normally on a securities matter the billing attorney would be a securities partner?

A. Normally. Not always however, because if another partner had a relationship with a client that it was thought to be useful or beneficial or requested that that partner be the billing attorney, even though the partner didn't do the work. I had done that in the past and I had worked on cases where others outside of sections had done that.

. . . .

Q. And did you go by Madison Guaranty to actually talk to Jim McDougal when this was set up?

A. I think I did stop by to see him, to have the conversation about paying the past due bill so that Mr. Massey could do the work that he had discussed with Mr. Latham.

Q. Can you tell us approximately how many times you ever went into Madison Guaranty?

A. I think that was the only time.[1796]

[1796] H. Clinton 4/22/95 Depo. at 8-16. This statement was consistent with McDougal's statement that he only met in person with Mrs. Clinton once. J. McDougal 8/96-6/97 Int. at 13.

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Mrs. Clinton was then asked specifically about McDougal's version of events:

Q. I want to hand you [a memorandum from Loretta Lynch to Bill Clinton, Hillary Clinton, Jim Lyons, and Bruce Lindsey], . . . And it sets forth a number of press either inquiries or reports. And what I want to ask you about is this number one, Washington Times, [Jerry Seper] . . . .

"He has contacted the campaign for a response to the story that BC requested that McD retain the Rose Firm/HRC and the timing and specifics of that retainer. At various times I have spoken with Webb Hubbell about this retainer issue over the last three weeks "in part to solve the 'how did the Madison Guaranty business come in' question and in part to determine if McD's allegation that he put HRC on retainer was in fact accurate. Both Jim McD (in Sam Heuer's office to Jim Blair and myself) and Susan McD (in the Post) have recounted that BC came into Jim's office in the summer of 1984; told him the Cs" "I assume the Clintons", "needed $ and asked him to hire HRC. The same day HRC allegedly came by re: a retainer. HRC was then hired in the summer of 1984. Supposedly there were other witnesses. Note that we have heard generally that 'people' are talking about this story to a variety of press."

Now, first I would ask you, in March of '92, do you recall this matter coming up?

A. It may have. I don't recall it specifically at this time as to when I first heard about this story.

Q. Did you hear anything along these lines back in '84 or '85?

A. No, I did not.

Q. Did your husband ever say anything about talking to Jim McDougal about you and your husband needing money?

A. No, he did not.

Q. Do you know whether or not your husband ever did, in fact, jog by Madison Guaranty and go in and talk to Mr. McDougal?

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A. I do not know.[1797]

In 1995, prior to the Rose billing records being produced, Mrs. Clinton was asked specifically about her work for Madison Guaranty in the spring of 1985. Mrs. Clinton said she "probably would have billed for every conversation I had about this matter, including the conversations with Rick Massey or whatever partners I talked to about paying back the past due bill. I would have billed for going to see Jim McDougal. But I can't be more specific than that."[1798] The Rose billing records produced to the OIC in January 1996 show that in the first five months of Rose's representation, Mrs. Clinton billed for speaking to only two partners: Watt Gregory on April 23, 1985,[1799] and Joe Giroir on June 5, 1985.[1800]

ii. May 1995 RTC Interrogatories.

The RTC served written interrogatories on the Clintons, which Mrs. Clinton answered in writing under oath, including information on Madison Guaranty's hiring of Rose:

> Interrogatory No. 17: With respect to the Rose Law Firm's representation of Madison Guaranty in 1985 and 1986:
>
> (a) Was Mrs. Clinton the lawyer responsible for obtaining this business for the Rose Law Firm? If not, who was?

Mrs. Clinton answered in pertinent part:

> To the best of my recollection, the president of Madison Guaranty, John Latham,

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[1797] H. Clinton 4/22/95 Depo. at 17-19.

[1798] Id. at 40.

[1799] Rose Law Firm Billing Records (May 6, 1985) (Doc. No. DEK014947).

[1800] Rose Law Firm Billing Records (July 15, 1985) (Doc. No. DEK014972). Giroir testified that he did not remember any discussion of payment of the old bill. Giroir 7/18/96 GJ at 25-26.

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who was a friend of an associate at the Rose Law Firm, Richard Massey, became interested in having Madison Guaranty issue some kind of preferred stock to raise capital. Latham had spoken to Massey about doing the related legal work. In the spring of 1985, Massey came to see me because he had learned that certain lawyers at the law firm were opposed to doing any more work for Jim McDougal or any of his companies until he paid his bill and then only if Madison Guaranty agreed to prepay a certain sum to the firm once a month to cover fees and expenses. Under such an arrangement, the firm could be assured that Madison Guaranty was staying current with regard to paying for the new work that the firm might do for it.

I believe Massey approached me about presenting this proposal to Jim McDougal because he was aware that I knew him. I agreed to go see McDougal. I visited him at his office on April 23, 1985, and told him that I understood Latham wanted Massey to do some work for Madison Guaranty, but that our firm would not let Massey proceed until the previous bill was paid and some kind of prepayment arrangement was worked out for new work the firm might do. As I recall, McDougal agreed that Massey could proceed with the work and informed me he would arrange to pay the past due bill. McDougal also indicated that he was agreeable to some kind of prepayment arrangement.[1801]

iii. February 1996 FDIC Interview.

On February 14, 1996, the FDIC interviewed Mrs. Clinton. (The RTC merged into the FDIC on January 1, 1996, and the FDIC continued the RTC's investigation.) This unsworn interview occurred following the public release of Mrs. Clinton's billing records, and after the public testimony of Rick Massey, and others, before the Senate Whitewater Committee. Mrs. Clinton's colloquy with the attorney for the FDIC was as follows:

Q. Here I'm paraphrasing -- I'm certainly not quoting -- but as I read [Massey's] testimony, he said that he had certainly talked with Mr. Latham about doing work for Madison, but it was not up to Mr. Latham to decide who would be hired. Mr. Massey said he hadn't met Mr. McDougal ever, and that Mr. Massey further said that he did not discuss fees or any sort of retainer arrangement with anyone at Madison. And further, it was his

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[1801] H. Clinton 5/24/95 RTC Interrog. Resp. at 34-35.

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recollection that he did not ask you to be billing partner, nor did he raise the subject of fees or retainer with other members of the firm. I'd like to ask you about your own recollection of how the client came in the door, how your recollections compare with those of Mr. Massey.

A. Well, as I have said consistently since 1992 and again, in my answers to the RTC interrogatories, my recollection is that Mr. Massey wanted to do the work he had discussed with Mr. Latham, that some partners, I believed in the securities section, had advised Mr. Massey that they were not enthusiastic about undertaking representation on behalf of Jim McDougal and Madison because of some problems in having work paid for in the past, and that there were discussions among partners.

I believe it was Vince Foster who came to me, who said that Mr. Massey wanted to do this work, but the partners didn't want him to do it. We had a very high regard for Mr. Massey, who was quite an energetic and accomplished first-year associate, already teaching a securities course at the law school and attracting people who wanted his advice, like Mr. Latham.

And I was asked, as someone who knew McDougal, if I could intervene and perhaps set up an opportunity for Mr. Massey to do this work. I agreed to do that. Obviously now, 10, 11 years later, much to my regret because of all the confusion and concern that has been raised by it.

So I talked with Mr. Massey about that work. Mr. Massey told me, as his testimony relates, that he had a talk with Mr. Latham, but it wasn't up to Mr. Latham, and he wasn't getting any support from others within the firm, and I told him I would talk to Mr. McDougal, which I did.

And as I recall, Mr. McDougal said well, if Latham wants him to do the work, that's fine. And because of the request of other partners in the firm, I advised Mr. McDougal that the work that Mr. Latham wanted Mr. Massey to do could not be done unless Madison [Guaranty] entered into a retainer agreement with the Rose Firm that would be payment against which fees and expenses could be billed on a monthly basis. Mr. McDougal agreed to that. I informed Mr. Massey. Mr. Massey undertook the work.

But it would not surprise me that Mr. Massey, as a first-year associate would not have direct knowledge of conversations among partners and decisions concerning whether or not he could do the work under whatever

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circumstances.

Q. You said you were asked to approach Mr. McDougal about the things you've described. Who asked you?

A. I don't have a specific recollection. I believe it was Vince Foster, but I'm not positive about that.[1802]

This statement by Mrs. Clinton's differs from her earlier statements. She said that Vince Foster rather than Rick Massey had approached her about Massey doing the work, and that she discussed with Foster, not Massey, that Rose partners were unhappy about Madison Guaranty's outstanding bill.

iv. Mrs. Clinton's 1998 Deposition.

In 1998, Mrs. Clinton was again deposed by this Office. In light of evidence that had emerged about Madison Guaranty's retainer of Rose -- including the billing records and Massey's testimony since her 1995 deposition -- Mrs. Clinton was asked to review the matters again:

[1802] H. Clinton 2/14/96 RTC Int. at 27-30. Mrs. Clinton's testimony was consistent with representations made to Bruce Ericson, an attorney with the law firm of Pillsbury Madison & Sutro, counsel to the RTC, by David Kendall, counsel to the Clintons. Ericson's memorandum of his conversation with Kendall noted that, according to Mrs. Clinton, the outstanding bill had been paid in the spring of 1985:

> Kendall told me the following: McDougal had complained about the bill and had refused to pay it. The bill had remained unpaid until the spring of 1985, when it was paid. The Rose Law Firm's trouble in collecting this receivable accounted for the firm's reluctance to accept new business from McDougal unless he paid for it in advance. Hence the retainer. . . . Kendall does not think the bill was adjusted downward or otherwise compromised in an attempt to get McDougal to pay. Kendall also does not think that McDougal paid it in 1983. Mrs. Clinton agrees. The bill probably remained unpaid until 1985.

Memo from Bruce Ericson, Pillsbury, Madison & Sutro attorney, counsel to the RTC, of telephone conversation with David E. Kendall, personal attorney for the Clintons at 1-2 (July 25,

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Q. All right. Let me now go to the billing records.

. . . .

The first entry that appears here is 4/23/85, H. Clinton. It records "Conference with J. McDougal and J. Latham; conference with [R.] Massey; conference with W. Gregory." Can you tell us what prompted this representation, and what prompted this first conference with Mr. McDougal.

A. Well, I can tell you what I remember, and I know this has been the subject of, you know, many discussions by many people. But based on my best memory in 1992, when I first tried to respond to questions about this matter, I recalled that we had a young, very intelligent, aggressive associate by the name of Rick Massey, who was friends with a young man named John Latham, who was maybe the president, but certainly a high-ranking officer at Madison Guaranty.

And they had been talking about perhaps Mr. Massey doing some legal business for Mr. Latham in the securities area. I think that Mr. Latham and Mr. Massey lunched together. They had a number of conversations. Mr. Massey was interested in doing this work.

But when he spoke with his securities partners about doing the work, he was discouraged from doing so because Mr. McDougal did not have a good reputation for paying his bills in the Rose Law Firm. He had been represented by the Rose Firm some years earlier and had not paid his bill. And so Mr. Massey was told that he should not get involved in representing a client, such as Mr. McDougal, for whom there would likely be payment problems.

Mr. Massey was discouraged by that, because he wanted to do the work. He then began talking with people in the firm and learned that I knew Mr. McDougal, and came to me, explained the situation. I had a high regard for Mr. Massey's legal skills and his go-getting attitude.

So, after talking with people in the firm, I asked if I were able to persuade Mr. McDougal to pay his bill and to promise to keep current with costs and expenses, if Mr. Massey could do the work. Based on that understanding, I went and visited with Mr. McDougal and Mr. Latham,

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1995).

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and they said that they would pay a retainer on a monthly basis.

They never completely paid their last bill. I think they ended up still owing nearly $900, but I later learned that they had paid the bulk of the bill that they hadn't paid for several years.

I also agreed, because of other partners' attitudes about Mr. McDougal, that I would serve as the billing partner and be responsible for making sure that Mr. Massey was paid for the work that he did.

That's my, that's my memory today. That was my memory in 1992 of what happened to bring this business into the Rose Law Firm.[1803]

Mrs. Clinton was questioned about the 1992 draft press statement, which tracked the recently produced billing records by referring to an April 23, 1985 meeting with John Latham and Jim McDougal, and stated the total amount billed as $21,202.25.[1804] Mrs. Clinton discussed the 1992 statement as follows:

Q. Now, in 1992, when you prepared this statement, how did you go about that?

A. Well, I thought a lot about this . . . because I've had to sort of reconstruct what probably happened, since I don't have any vivid memory of actually doing it.

I do know that this was typed on my daughter's home computer. So, I obviously prepared and typed it myself at some point in February, March, April, I don't know when, in 1992, when I was home for those very brief visits, when I came home off the campaign trail. You know, I went back and refreshed my memory about what was going on during that period, and from the New Hampshire primary of February 12th, 1992 until the California primary of June 2nd, there was, you know, all kinds of elections going on every week. So, this was typed on our home computer by me.

[1803] H. Clinton 4/25/98 Depo. at 22-24.

[1804] H. Clinton Draft Campaign Statement (1992) (Doc. Nos. DEK 200962 through 963).

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Q. And in typing that, did you have the billing records to assist you in putting the date down when you talked to McDougal and went by to see him at his office? As you see in the billing records, it says you had a conference with Jim McDougal on April 23rd. Did you have that when you came up with this 21,000 figure?

A. I might have, or I might have gotten information from Vince Foster or Webb Hubbell, who I knew were reviewing the bills, since I've since learned that. I don't -- I don't know whether I had them in front of me at that time, or whether I had looked at them and made observations about them. But obviously I had the information that you refer to that was on the billing records.[1805]

Mrs. Clinton was asked about McDougal's outstanding bill paid by him in October 1984:

Q. Now, I direct your attention to the billing records again. It's the first page after the client billing and payment history. This would be DEK014941. This -- can you identify that document?

A This is a Rose Law Firm bill.

Q. Who is it to?

A. It looks like it's to the Bank of Kingston.

Q. . . . . The document there has a Paid stamp down there. It says Bank of Kingston, date, 12/31/81. Do you see that?

A. Yes.

Q. Then we went through this last time, but there was a note there. It says, "HRC. I believe there was a subsequent bill." And that was Mr. Foster's handwriting, correct?

A. Yes.

Q. . . . . Now, you stated during your campaign statement, and then you stated to us in April of '95 that Massey came to you. He wanted to do the work. There was an old bill outstanding that was due and owing. And you were

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[1805] H. Clinton 4/25/98 Depo. at 26-27.

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asked to intervene with McDougal to get the old bill, plus then arrange for this advance against fees or retainer.

Do you recall that's what you said on those occasions?

A. Yes, I did.

Q. Now, and I believe we asked you in April of '95, was the bill ever paid. And I believe your answer at that point was, I don't know. Now, is that your answer today?

A. No. Since then, I have learned that $5,000 of the $5,900 bill had been paid at some point. I don't know when.[1806]

Mrs. Clinton was also asked about a recently produced chronology drafted by Foster during the 1992 campaign:

Q. This document was found in the briefcase of Mr. Foster and produced to the Independent Counsel's Office in late July 1997.

Can you read the entry there for 10/23/84?

A. Yes. It says "$5,000 paid on Bank of Kingston bill."

Q. All right. Did Mr. Foster tell you in 1992 that the old bill had been paid, or $5,000 had been paid on the old bill?

A. No, he did not. And also when he edited my two-page statement, he didn't change my understanding which I typed about his not paying the bill. And also, as we can see with his writing on this copy of the bill, he said, "I believe there was a subsequent bill."

So, either he didn't think that the fact that $5,000 was paid on a $5,900 bill constituted full payment, or for some reason he didn't know. Or he neglected to tell me.

But, in any event, my understanding, which I believe I must have gotten from Mr. Foster since he had worked on the Bank of Kingston matter, was

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[1806] Id. at 31-32.

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what I believed at the time.[1807]

Mrs. Clinton was asked about the old bill found in Foster's attic, marked "Paid" and dated October 23, 1984, in addition to documents related to the payment of the old bill, also found in Foster's attic, including:

- The minutes of the September 1984 Madison Bank board meeting at which Gary Bunch, president of the bank, was authorized to negotiate settlement of the outstanding Rose bill; [1808]

- The October 9, 1984 letter from Foster to Bunch demanding payment by October 22, 1984 and threatening to sue if payment was not received;[1809] the $5,000 check that Madison Bank & Trust sent to Rose on October 22;[1810]

- The minutes of the November 1984 Madison Bank board meeting, noting that earnings would be down because a legal bill had been paid.[1811]

Mrs. Clinton responded, "I don't know anything about the letter [from Foster to Bunch] or the agreement it refers to."[1812]

Mrs. Clinton was asked if she agreed that these documents established that the bill was paid in October 1984:

[1807] H. Clinton 4/25/98 Depo. at 32-33.

[1808] Minutes of the Madison Bank and Trust Board Meeting (Sept. 25, 1984) (Doc. Nos. MGSL-FR-00000062 through 63).

[1809] Letter from Vincent Foster Jr., Rose Law Firm attorney, to Gary Bunch, Madison Bank & Trust employee (Oct. 9, 1984).

[1810] Check from Madison Bank & Trust payable to Rose Law Firm for $5,000.00 (Oct. 22, 1984) (Doc. No. 2091-00010390).

[1811] Minutes of the Madison Bank and Trust Board Meeting (Nov. 1984) (Doc. Nos. MGSL-FR-00000064 through 66).

[1812] H. Clinton 4/25/98 Depo. at 41.

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Q. Taking that [letter from Foster to Bunch], with a copy of the old bill that we now have marked paid 10/23/84, does it appear to you that the old bill was paid in October of 1984?

A. Well . . . again, I've never seen these before. But my reading of Mr. Foster's letter is that the firm agreed to a $5,000 fee limitation. But, of course, they would expect their expenses to be paid. That would, that -- in the way that is written, that does not refer to costs and expenses.

So, from my perspective, the bill, which was for $5,893.63, was not paid in full. And, instead, the firm had to take a diminution of the fee and allocate money to the expenses. And then, if I look back at the chronology you've provided me from Mr. Foster, as you identified it, it says that $5,000 paid on Bank of Kingston bill which, again, suggests to me that Mr. Foster at least did not consider this account to be paid in full.

So, from my memory of what I knew at the time, at least in the minds of a number of lawyers in the Rose Law Firm, Mr. McDougal was a deadbeat who was a very difficult client to collect from, that you had to threaten to sue to get paid and then, even if you made an agreement with him of a $5,000 fee limitation, he didn't fulfill the agreement.

Now, that's what this says to me, looking at it in a whole.

Q. Now, we've heard from Mr. Bunch. He said this was the final payment. It was settled with Mr. Foster. He was authorized to negotiate a settlement. He paid the $5,000.

You're right, it diminished the fee allocation. There was never anything else paid on this bill. So, if you went over there to see Mr. McDougal to get the $893, do you remember talking to him, you need to pay the rest of the money?

A. [M]y memory in 1992 was that in 1985, seven years earlier, Mr. Massey wanted to do work for Mr. Latham at Madison, and was being frustrated in doing so because members of our firm said that Mr. McDougal was not someone they wanted to do business for again because he didn't pay his bills, and that he hadn't paid everything that was owed to the firm.

Now, that is my memory. That was my memory in 1992. It is my memory today. I can't tell you anything other than that.

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Q. And you are saying --

A. And also, I would add that the story that Mr. McDougal was telling at the time made no sense, because everyone who did any business with the Rose Law Firm knew that you didn't get credit for bringing in business. You didn't get any extra money for bringing in new clients. And so this, this whole matter just never, you know, rung true to me.

And so my memory, to me, was much more reliable.

Q. Mrs. Clinton, let me just ask you, was your stating that this came about through Massey, was it an effort to keep the media away from your husband perhaps requesting work for you from an S&L that was in trouble?

A. Absolutely not . . . That never crossed my mind. I told what my memory of what had happened, happened to be, and that's what I believe to this day.

Q. Mr. Foster died on July the 20th, 1993, which was some two years before we interviewed you on the subject, when you talked about the old bill. Is it your testimony he never told you that the $5,000 was paid?

A. I have no memory of Mr. Foster telling me that. I'm not going to tell you that he absolutely didn't, but I have no memory of that.[1813]

Finally, Mrs. Clinton was asked about her statement (in the 1992 press draft) that she reported this April 23, 1985 meeting with McDougal to her partners:

Q. You then state in your statement that you reported your meeting with Mr. McDougal to your partners. This is the first sentence of the next paragraph. Which partners did you report the meeting to?

A. Again, I don't have any memory. But if you will let me, I will do my best to put this in some context for that question.

I believe I probably reported it to Watt Gregory, since I had a conference

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[1813] Id. at 42-45.

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with him on that day, and Watt was a senior securities lawyer and would have, I believe, been responsible for working with Mr. Massey and supervising him.

I believe I also would have reported back to Vince Foster because I have a feeling that Vince Foster had hard feelings about Jim McDougal and about what McDougal had put him through, and about the insulting attitude about Carol Arnold, who was a particular associate in the firm that Mr. Foster did a lot of work with. So, I think I would have had to go to some lengths to persuade Mr. Foster that it was a good idea for us to become involved with Mr. McDougal again.

Q. Do you remember it being, so to speak, a tough sell to the partners?

A. Not once we had the retainer. I think once there was an agreement that Madison would pay a retainer that would be billed again -- it wasn't a retainer that we would keep; it would be an advance against fees and expenses -- then I think the partners felt that it was all right for Mr. Massey to go forward. But they certainly wanted me to make sure that that retainer came in every month, and that there wasn't any slippage between the agreement that had been reached and what actually happened.

Q. Were you always to be the billing partner?

A. Well, my memory is that that was part of the arrangement, that since I had gone to Mr. McDougal and had actually gotten him to agree to a retainer, that I would be responsible for making sure that the bills for the work that was done would be paid completely, fees and expenses, without any question.

Q. What was your understanding of the work that was going to be done?

A. My understanding was that it was going to be securities work and that Mr. Massey would do it pursuant to his discussions with Mr. Latham.

Q. What was your understanding as to Madison's financial health or Madison's financial condition at the time Rose undertook this representation?

A. At that time, I don't think I had any knowledge of or information about Madison one way or the other.

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Q. Mr. Gregory has told us that there was a -- of course, he was a securities lawyer; you were not -- but that at that time it was well-known in the Little Rock community that Madison was not financially healthy in particular, and that savings and loans in general were not financially secure.

Does that refresh your recollection at all?

A. Well, I certainly knew that savings and loans were going through some financial difficulties. I don't know that I knew that any particular one, specifically Madison, was.[1814]

Mrs. Clinton's statements and testimony about the Rose-Madison Guaranty retainer are summarized as follows:

1) Rick Massey was a friend of Latham, and Latham agreed to have Madison Guaranty hire Rose at Massey's request.

2) Some Rose partners objected because McDougal had not paid a prior bill.

3) Massey asked Mrs. Clinton to get McDougal to pay the old bill.

4) Mrs. Clinton spoke with McDougal, who then paid the bill, and agreed to a "retainer" against future fees.

5) Mrs. Clinton acted as billing partner because associate Massey could not, and because she had worked out the payment of the old bill.

Mrs. Clinton's testimony varied insofar as in 1996 she testified that a Rose partner, probably Vince Foster, approached her about Massey getting the work, but there was an objection because of the old bill, while her pre-1996 version was that Massey, not Foster, or another partner, came to her. In 1998, her testimony reverted to the Massey version. Also in 1998, she testified that the amount outstanding on the bill might have been the remaining $893, rather than the entire amount. Other evidence regarding the five aspects of Mrs. Clinton's statements is

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discussed in the following sections.

c. Other Evidence Regarding Mrs. Clinton.

i. Whether Massey and Latham Arranged to Have Madison Guaranty Hire Rose.

Rick Massey -- After graduating from law school in May 1984, Massey started at Rose as a law clerk.[1815] After passing the bar in August 1984, he became an associate assigned to the securities section. Massey's mentor was partner David Knight. Massey knew Madison Guaranty's president, John Latham, from college.[1816] Massey and Knight had lunch with Latham and asked him to send some legal work to Rose.[1817] Latham said he would like to, but that Jim

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[1814] Id. at 50-53.

[1815] Massey 11/7/95 GJ at 5.

[1816] Massey 12/3/97 GJ at 24.

[1817] Id.; Senate Whitewater Comm. Hearing, supra note 147, at 45 (Jan. 11, 1996) (testimony of R. Massey). ("I actually pitched the business to him. I think the pitch was basically, gee, I'm . . . you're asking me all these questions. Why don't you hire us and put us to work on some of these things"). Massey agreed that as an associate he could not bring in a new client without a partner as billing attorney. Id. at 153.

It is unclear when this lunch occurred. Massey thought that he taught a class on securities regulation with Knight in the fall of 1984, which Latham audited. Massey 12/3/97 GJ at 24; Senate Whitewater Comm. Hearing, supra note 147, at 18, 23 (Jan. 11, 1996) (testimony of R. Massey); Massey 11/7/95 GJ at 21-23. Massey testified that he became reacquainted with Latham, who frequently approached him after class to ask about securities issues. Massey 11/7/95 GJ at 23. Documents from UALR Law School indicate that Latham took securities regulation in the fall of 1983, and took corporations taught by David Knight in the spring of 1984. Law School Transcript of John Latham (June 17, 1996) (Doc. Nos. 2031-00000027 through 29).

Massey thought that he pitched the business to Latham in early 1985. Senate Whitewater Comm. Hearing, supra note 147, at 151 (Jan. 11, 1996) (testimony of R. Massey). Latham's memory is also different from Massey's. Latham testified that Massey's pitch about Rose came while he and Massey were studying for the bar examination in the summer of 1984. Latham

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McDougal hired the lawyers and McDougal was happy with Jim Guy Tucker's firm, Mitchell Williams.[1818] Massey said it was "at least weeks later" when Rose was hired by Madison Guaranty on the preferred stock offering.[1819] Massey testified that he did not think that he brought Madison Guaranty's business into Rose.[1820] In his grand jury testimony, Massey said he "d[id] not know how Madison Guaranty came to be a client of the firm."[1821] In his Senate testimony, Massey said that although he did not remember how the business came in, "I don't recall feeling like this was my . . . that I killed this deer . . . I didn't have a big part when they came in."[1822] Massey said he would have remembered bringing in a client:

> Q. Mr. Massey, let me say something to you. First-year associate, you're there, if you had brought in this business, it would have been the first piece of business I think you testified that you brought into the firm; right?

5/15/96 Senate Whitewater Comm. Depo. at 7.

[1818] Massey 12/3/97 GJ at 24-25; Massey 11/7/95 GJ at 45 ("And John said, 'Gee, it's....I don't remember the precise words. Again, it's been 10 years. But the general impression I got was, he'd like to do that but that his boss, I assume it was Mr. McDougal, was happy working with the Mitchell Firm, and that it was not up to him as to whether we could get any work").

[1819] Senate Whitewater Comm. Hearing, supra note 147, at 152 (Jan. 11, 1996) (testimony of R. Massey) ("I pitched the business, I was told that it wasn't up to him. Sometime later, months or weeks, I wish I could tell you, hours, days, I believe it was weeks, at least weeks, we got this piece -- the first piece of work for Madison [Guaranty], which was the preferred stock issue").

[1820] Massey 11/7/95 GJ at 43 (Massey did not remember being a part of the process of arranging the retainer); Massey 12/3/97 GJ at 26 (confirming that he did not know how the business got to Rose).

[1821] Massey 11/7/95 GJ at 21. Massey also said, "My position has been that I'm not -- and it is today that I'm not aware of how -- what their motivation was for hiring us. I have -- I had a relationship with their president, which might have been a factor. But I don't -- you know, I don't know that I -- you know, I don't know. You'd have to ask them why they came to us." Id. at 82.

[1822] Senate Whitewater Comm. Hearing, supra note 147, at 78 (Jan. 11, 1996) (testimony of R. Massey).

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A. That's correct.

Q. You would have remembered that?

A. That's correct.

Q. You don't remember bringing that business into the firm?

A. No, sir, I do not.[1823]

But Massey stated that he did not have all the facts:[1824] "[I]t's outside my knowledge about whether I brought the Madison Guaranty matter in or not."[1825] Consistent with his grand jury testimony, Massey said the reason he thought that Latham did not offer Madison Guaranty's work to him was because McDougal, not Latham, hired the attorneys: "John told me it was up to his boss. It was up to Mr. McDougal."[1826]

David Knight -- Knight remembered lunch with Latham and Massey: "We took Mr. Latham to lunch, and I can't remember certainly the specific conversation but the gist of it was we told him a little bit about the types of work that Rick and I did. Representative clients for the firm. And then asked him for business."[1827] Like Massey, Knight remembered Latham said

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[1823] Id. at 232-33, 240-41 (testimony of Massey). By way of contrast, when he was later asked if he remembered the first client he brought in, Massey testified that he remembered bringing in his first client in 1988, shortly before he made partner. Massey 12/3/97 GJ at 64.

[1824] Senate Whitewater Comm. Hearing, supra note 147, at 77 (Jan. 11, 1996) (testimony of R. Massey).

[1825] Id. at 29 (testimony of Massey).

[1826] Id. at 26 (testimony of Massey).

[1827] Senate Whitewater Comm. Hearing, supra note 147, at 10 (May 16, 1996) (testimony of D. Knight).

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McDougal decided which law firm to hire: "My recollection is that he said that Mr. McDougal was really the one that made decisions about hiring lawyers . . . . He also said that Madison Guaranty regularly used another law firm and that he thought they were satisfied with the services provided by the law firm."[1828] Knight said he left the lunch with the impression Rose did not get the business.[1829]

John Latham -- Latham did not remember taking a class taught by Knight and Massey, nor did he remember lunch with them.[1830] Latham remembered Massey expressing interest in Madison Guaranty's legal work: "I do recall that Rick pitched the business in the sense that he wanted us to hire them to do legal work for us. I do not remember the lunch."[1831] Latham testified in the Senate that Massey approached him, but that he told Massey it was McDougal's decision whether to hire Rose:

> Rick Massey and I ran into each other when we were studying for the bar, and Rick went to work for the Rose Law Firm after that, and had talked with me about us using the Rose Law Firm. And I think I probably mentioned that to McDougal at some point. At some later point, Jim came back to me and said let's use the Rose Law Firm, and he wanted to put them on retainer . . . . I think he wanted to use them because he had friends over there, and one of those friends, of course, was Hillary. He had used the Rose Law Firm there before. What's open there, of course, is what prompted Jim to make that decision. Was it a conversation with Hillary or was it just because I had suggested that at some point I would like to work with the Rose Firm at some point. I don't know.[1832]

[1828] Id. (testimony of D. Knight).

[1829] Id. at 11, 13 (testimony of Knight).

[1830] Latham 5/15/96 Senate Whitewater Comm. Depo. at 10-11. Latham remembered being taught a corporations course by Knight while in law school. Id.

[1831] Senate Whitewater Comm. Hearing, supra note 147, at 35 (May 16, 1996) (testimony of J. Latham).

[1832] Latham 5/15/96 Senate Whitewater Comm. Depo. at 7-8. Latham graduated from law

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Latham said McDougal decided which law firm to hire.[1833] When asked who hired Rose, Latham testified, "Jim McDougal did."[1834] Latham did not remember any discussions about an unpaid bill.[1835]

Webb Hubbell -- Hubbell's earliest statements on Rose and Madison Guaranty were made during the 1992 presidential campaign. Hubbell was the campaign contact on Rose issues.[1836] Campaign staff member Loretta Lynch's notes show that a reporter called Hubbell on February 18, 1992, and asked how Rose was hired by Madison Guaranty.[1837] Lynch's notes

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school in May 1984, and studied for the bar the summer of 1984. John Latham's UALR grade transcript (June 17, 1996) (Doc. No. 2031-00000027). In a FDIC interview Latham said McDougal suggested that Madison Guaranty use Rose. Latham 7/12/95 RTC Int. at 1 ("LATHAM said that at one time, date not recalled, JAMES MCDOUGAL suggested that Madison Guaranty use ROSE for some of the legal work at the institution. LATHAM said that, 'MCDOUGAL had friends over there, he suggested we use them.' LATHAM said when asked who the friends were that it was HILLARY RODHAM CLINTON and others").

[1833] Latham 2/14/95 Int. at 1; Latham 5/15/96 Senate Banking Comm. Depo. at 12-15.

[1834] Senate Whitewater Comm. Hearing, supra note 147, at 15 (May 16, 1996) (testimony of J. Latham). When asked if it is "safe to say you personally did not hire the Rose Law Firm to work for Madison Guaranty," Latham responded, "Yes, in the sense . . . that I didn't make the decision to hire them and move that forward." Latham 5/15/96 Senate Whitewater Comm. Depo. at 8-9. Pat Heritage-Hays, an assistant to Latham, said when she learned Madison Guaranty was paying Rose $2,000 per month, she asked Latham about it, and he responded, "Oh, it's one of Jim's deals." Heritage-Hays 1/6/95 Int. at 1.

[1835] Latham 2/14/95 Int. at 2; see also Latham 5/15/96 Senate Whitewater Comm. Depo. at 22.

[1836] Lynch 2/1/96 GJ at 9.

[1837] See Memo (draft) from Loretta Lynch, Clinton Campaign Staff, to David Wilhelm, Clinton Campaign Manager, and Bruce Reed, Clinton Campaign Staff in charge of Issues at 5 (Feb. 18, 1992) (Doc. Nos. 263-00000348 through 360).

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reflected Hubbell told her that "HRC brought [Madison Guaranty] to the firm."[1838]

Susan Thomases's notes reflect a conversation with Hubbell on February 24, 1992, where Hubbell told Thomases:

> Massey had relationship w/ Latham & HC had relationship w/ MacD. Rick will say he had rel[ationship] w/ Latham & had a lot to do w/ getting the client in. She did all the billing. According to time recs, HC had numerous conf[erences] with Latham, Massey, and McDougal on both transactions. She reviewed some docs. She had one TC in 4-85 at the beginning of the deal w/ Bev. [Bassett]. Neither deal went through. Broker/dealer was opposed by staff but approved by Bev under certain condition which they never met. Preferred stock?! But for Massey, it would not have been there. But HC was billing partner and attended conferences.[1839]

Massey testified that during the 1992 campaign he never told Hubbell he would say he brought in the business.[1840] Massey testified that he never spoke with Hubbell about it.[1841] Massey said he spoke to reporter Jeff Gerth, and told him he did not know why Rose was hired and that Gerth should ask Jim McDougal.[1842]

Hubbell's February 1995 report of interview with this Office said:

> HUBBELL notes that Madison [Guaranty] was HILLARY's client, as she is the one who brought Madison [Guaranty] into the firm as a client, that is why she became the billing partner.[1843]

[1838] See id.; see also Lynch 2/1/96 GJ at 10-11.

[1839] Susan Thomases's notes of conversation with Webb Hubbell (Feb. 24, 1992) (Doc. No. 790-00000020) (emphasis added); see also Thomases 2/29/96 GJ at 45.

[1840] Massey 12/3/97 GJ at 63 ("I can say with certainty that I would never tell Webb Hubbell or gave him the impression that I brought that business in").

[1841] Id. at 37.

[1842] Id. at 38.

[1843] Hubbell 2/1/95 Int. at 7.

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In December 1995, Hubbell was asked questions in the grand jury about this:

> Q. I'm looking back over some notes of interviews with you, and I ask you, do you recall ever saying that Madison Guaranty was Hillary's client as she is the one who brought Madison Guaranty into the firm as a client, that is why she became the billing partner? Do you ever remember making a statement to that effect?
>
> A. I don't remember it. I don't doubt that I could have, but I don't remember it.[1844]

Hubbell told the Senate in 1995 that "Massey was the one who wanted them as a client and that Mrs. Clinton was one of those who helped him accomplish that task."[1845] Hubbell was read a March 12, 1992 article that said: "Webster L. Hubbell, a partner and spokesman at Rose, said that nothing in the law firm's records indicates that Hillary Clinton brought in the Madison Guaranty business. 'That's a new one on me,' he said." Asked whether the quote was accurate, Hubbell replied, "I don't know if I said that, but there is nothing in the records -- this is where lawyers are being lawyers . . . . There is nothing in the records of the firm that show that Hillary brought in the business."[1846]

Hubbell testified that he had no personal knowledge of the matter.[1847] In testimony inconsistent with his denial, Hubbell had earlier testified that Massey approached him in 1984 and asked for help getting Madison Guaranty's business.[1848] Hubbell testified that Massey had

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[1844] Hubbell 12/19/95 GJ at 187.

[1845] Hubbell 10/26/95 Senate Whitewater Comm. Depo. at 122.

[1846] Hubbell 12/19/95 GJ at 108.

[1847] Hubbell 5/7/96 GJ at 74-75 ("I don't know for sure who brought it in. . . . I don't have personal knowledge, right").

[1848] Hubbell 10/26/95 Senate Whitewater Comm. Depo. at 134.

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spoken to John Latham, and felt Rose could get some of Madison Guaranty's work.[1849] Hubbell said he did not try to help Massey.[1850]

ii. Whether Rose Partners Objected to Madison Guaranty Becoming a Client.

Rick Massey -- Massey testified in 1995 that he did not remember discussing Madison Guaranty billing matters with Rose partners:

> [D]o I remember going to the partners and saying, "We want to represent the "Madison [Guaranty]," and other partners saying, "You're not going to do that until they catch up on their bill, and maybe there ought to be a retainer." I have read that [Joe] Giroir said that. I don't recall Giroir ever having said that to me. I don't remember me being in any of that discussion, and it frankly would not have been a matter in which I normally would be involved because I was a first year associate, and we didn't have much input on billing arrangements of that kind. It's possible, however. I just don't remember it.[1851]

Massey remembered no such discussion with either securities partners or Mrs. Clinton:

> Q. Mr. Massey, do you remember anything about your going to the securities partners and saying, "I want to work on a case for Madison [Guaranty]," and they said, "We're not going to approve that until Madison [Guaranty] has paid us what they owe us on some other case"?
>
> A. I don't -- no, sir. I don't remember that.
>
> Q. Either with any securities partners or with Mrs. Clinton?
>
> A. I don't remember doing that with anybody.[1852]

[1849] Id. at 134-36.

[1850] Id. at 135.

[1851] Massey 11/7/95 GJ at 85. Giroir testified that he did not remember Rose representing Madison Guaranty in 1985 and 1986 or any discussions in the firm about any representation. Giroir 7/18/96 GJ at 23-27.

[1852] Massey 11/7/95 GJ at 32. Massey said that although he does not remember it, it is "possible" he told Knight he thought he was going to get Madison Guaranty as a client. Id. at 84-

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Massey testified that he knew his memory contradicted Mrs. Clinton's.[1853]

David Knight -- David Knight remembered "some discussion" about Madison Guaranty not paying an old bill but could not remember the details.[1854]

Webb Hubbell -- Hubbell said he remembered Rose partners were reluctant to work for Madison Guaranty because of previous payment problems:

> There was an issue in the fact that the firm had represented one of -- Mr. McDougal prior to this issue, before Madison Guaranty, and Mr. McDougal still owed the firm some money. And several of the partners were not anxious for us to work for McDougal until that outstanding balance was still paid."[1855]

Hubbell said he did not remember if he was part of the discussions about the old bill, just that he knew about them:

> Q. You have told us about the talk within the firm that they've got to pay their old bill first, and then some arrangement whereby there's going to be the new. But I take it you're telling us today you don't remember if you were in on that or not?

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85. Before the Senate Whitewater Committee in 1996, Massey also testified that he did not remember a discussion with any Rose partner about Madison Guaranty's outstanding bill or partners objecting to bringing Madison Guaranty in again as a client because of the billing problems: "I've heard that there were discussions, that there was some disgruntlement. And discussions like this could have gone on. I don't believe I was a party to them." Senate Whitewater Comm. Hearing, supra note 147, at 23-24 (Jan. 11, 1996) (testimony of R. Massey).

[1853] Massey 11/7/95 GJ at 84.

[1854] Knight 12/6/95 GJ at 15-16 ("That rings a bell. I just recall some discussion about a prior problem with Madison Guaranty or McDougal not paying a bill or, you know, some -- with respect to some earlier representation. But I don't remember it in the sense of kind of a formal declaration or consideration -- you know, consideration of the thing. I don't recall being involved in any lengthy discussion or, you know, policy statement or anything like that about it. I just do generally recall that topic coming up").

[1855] Hubbell 12/19/95 GJ at 43-44. When asked which partners he remembered being upset about McDougal's past non-payment Hubbell identified Foster and Gregory. Id. at 46.

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A. No, I don't. I was aware of it, but I don't remember any specific, you know, "It's got to be paid," and things of that sort. I mean, I was aware that there was a concern.[1856]

Hubbell said he did not remember talking to Mrs. Clinton about a retainer for Madison Guaranty, but did remember talking to her about other firms' use of retainers.[1857] Hubbell said he spoke to Mrs. Clinton in the mid-1980s about Madison Guaranty's billing problems and the old bill being paid before doing any more work:

A. I know that I had conversations with her when we first took on the Madison Guaranty representation, that was in '84 or '85.

Q. What do you recall about those conversations in '84-85 about the Madison Guaranty representation?

A. The law firm did not want to -- some of the members of the law firm did not want to represent Madison Guaranty until Mr. McDougal had paid an old bill owing the firm.

Q. And what was Mrs. Clinton's position with regard to whether the firm should represent McDougal?

A. She thought that if he got right with the firm, that she didn't see any reason why we shouldn't represent him.

Q. Did McDougal ever "get right with the firm"?

[1856] Id. at 61-62.

[1857] Id. at 67. Mrs. Clinton said she did not remember any conversations with Hubbell about Madison Guaranty's business or retainers. H. Clinton 4/22/95 Depo. at 13-14 ("I don't recall any [conversations with Hubbell], but I might very well have had conversations with him"); see also Hubbell 2/1/95 Int. at 6 ("HUBBELL does not know if HILLARY CLINTON talked to the firm regarding the MADISON retainer, nor does he have any memory of HILLARY CLINTON talking to HUBBELL personally about the retainer").

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A. Yes, he did.[1858]

Watt Gregory -- Watt Gregory, a senior member of Rose's securities section, said he remembered "some general discussion" about whether Rose should work for Madison Guaranty.[1859] Gregory remembered talking to Mrs. Clinton "about whether we should or shouldn't [represent Madison Guaranty], or what some of the issues might be in connection with the ability of the savings and loan to raise capital by that particular method."[1860] Gregory testified "that Mrs. Clinton was instrumental in introducing the client to the lawyers in the firm."[1861]

Gregory remembered two specific concerns about Madison Guaranty.[1862] Gregory felt that Rose, which had represented no savings and loans, did not have the expertise.[1863] Gregory thought the business potential was small and the risks were great; he understood that savings and loans in general (and Madison Guaranty in particular) were having financial difficulties and he "didn't perceive Madison [Guaranty] to have a particularly attractive risk/reward ratio for our

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[1858] Hubbell 10/26/95 Senate Whitewater Comm. Depo. at 131-32.

[1859] Gregory 1/3/96 GJ at 7. Gregory testified that although he remembers some discussion, he cannot remember "names, places, or dates." Id. Gregory remembered one party to the discussions was David Knight. Gregory 5/24/95 Int. at 2.

[1860] Gregory 1/3/96 GJ at 25-26.

[1861] Id. at 6. Gregory's 1995 OIC interview reads: "RLF's opportunity to represent Madison Guaranty Savings & Loan (MGSL) came through Hillary Clinton in the mid 1980's." Gregory 5/24/95 Int. at 2.

[1862] Gregory 1/3/96 GJ at 13, 15-16 ("But I do know that there was an open discussion about the client, or the potential client, as well as the substantive issue, could a state-chartered, stock-owned savings & loan association have two classes of stock . . . But to my way of thinking, the discussions about, 'Should we be doing this,' took place before we undertook the particular project").

[1863] Id. at 9-10

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firm as a new client."[1864] He was also concerned that "there was no bright-line, black-letter statement in the Arkansas statutes that would say you can have two classes of stock."[1865] Gregory did not remember any discussion about Madison Guaranty's outstanding bill.[1866] When asked about how Massey was assigned to the project, Gregory said, "I have some recollection that he, at one point, mentioned a friendship or an acquaintanceship with this John Latham."[1867]

Four other Rose partners -- William Kennedy, George Campbell, Joe Giroir, and Wilson Jones -- were asked about any discussions within the firm or with Mrs. Clinton about Madison Guaranty retaining Rose. None of the four remembered any.[1868]

iii. Mrs. Clinton's Discussion with McDougal.

As previously discussed, in 1994, 1995, and 1998, Mrs. Clinton said Massey asked her help to resolve McDougal's old bill. In contrast, Massey testified in 1995 that he did not remember speaking with Mrs. Clinton or any other Rose partners about the bill.[1869] Massey told the Senate in 1996 that he did not remember approaching Mrs. Clinton about representing Madison Guaranty:

> Q. [A]m I correct that you did not go to Mrs. Clinton and say I have a proposal to do work, can you go to Mr. McDougal and get him to agree to prepay?

[1864] Id. at 8-10.

[1865] Id. at 13-14.

[1866] Id. at 18.

[1867] Id. at 29.

[1868] Senate Whitewater Comm. Hearing, supra note 147, at 277 (Jan. 16, 1996) (testimony of W. Kennedy); Campbell 6/28/96 Int. at 2; Giroir 7/18/96 GJ at 24-26; Jones 6/27/96 Int. at 3.

[1869] Massey 11/7/95 GJ at 33-34.

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A. Sir, I don't have a recollection of that.[1870]

When asked if he remembered approaching Mrs. Clinton about getting Madison Guaranty as a client, Massey testified:

> It's possible that I had a casual conversation with her that I don't remember from 11 years ago, sir, but I don't recall a conversation in which I went to her and asked her to help me bring in the client.
> . . . .
>
> Now, it's possible -- and I think I knew at that time that Mrs. Clinton had some relationship with Mr. McDougal, and so it's possible that I could have had a casual conversation with her in a hallway and said gee, we'd really like to try to get these folks' business, and maybe you could have a word with Mr. McDougal. It's very possible.
> . . . .
>
> It's possible that I had a conversation with her about gee, I think we might be able to get these folks' work, you know McDougal, maybe you could go talk to her.
>
> [D]id I talk to her with respect to how we were going to bill them, whether we get a retainer, did I have a specific engagement agreement of some kind. Sir, I don't have any recollection of that happening. I don't believe it happened that way. Could I have had a conversation with her, can you have a talk with Mr. McDougal, that's very possible. I want to -- that's my testimony.[1871]

iv. Payment of McDougal's Old Bill.

The McDougal-controlled Madison Bank & Trust did at one time have a long-outstanding old bill from Rose. Rose billed Madison Bank in July 1982 for $5,000 in legal fees, and $893 in

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[1870] Senate Whitewater Comm. Hearing, supra note 147, at 26, 135-36 (Jan. 11, 1996) (testimony of R. Massey) ("I do not remember, as you said earlier, a proposal in hand to her and discussing with her that there were partners in the firm that were dissatisfied with McDougal and here is a proposal and let's work it out. I have no recollection of that").

[1871] Id. at 20, 25, 136, 234 (testimony of Massey).

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expenses. Rose had lost the case it was billing for, and McDougal refused to pay. The Independent Counsel found several basic facts about this bill.

When the Madison Bank & Trust board of directors met on September 25, 1984, the old bill was on the agenda. Under the heading "Rose Law Firm," the meeting minutes recorded: "We owe $5,000 for Huntsville move appeal, according to firm. Mr. Vaughn moved, Mr. McDougal seconded that Mr. [Gary] Bunch [president of Madison Bank] will negotiate settlement with Rose Law Firm. Approved unanimously."[1872] On October 9, 1984, Vince Foster wrote to Bunch, referring to their conversation the week before, saying Rose would sue if Madison Bank did not pay its bill by October 22.[1873] Madison Bank sent a $5,000 check to Rose on October 22, 1984, and Rose endorsed it three days later.[1874]

On November 27, 1984, the Madison Bank and Trust board met again. The minutes reported earnings would be down because of "heavy accounting fees . . . and a payment of legal fees."[1875] Bunch said he understood the $5,000 payment settled the debt, even though the costs portion had gone unpaid and Rose never sent another bill.[1876]

The evidence established that Mrs. Clinton was wrong when she said she met with Jim McDougal on April 23, 1985 to discuss the old bill and that he thereafter paid that bill. According to the chronology Vince Foster created during the 1992 campaign, $5,000 was paid on

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[1872] Bunch 1/20/98 GJ at 16 (discussing minutes).

[1873] Id. at 23-24, 26 (discussing letter).

[1874] Id. at 26-27 (discussing check and endorsements).

[1875] Id. at 17.

[1876] Id. at 30.

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the Bank of Kingston bill on October 23, 1984,[1877] and this was confirmed by the original copy of the bill stamped "Paid" on October 23, 1984 found in 1997 in Foster's attic. Mrs. Clinton acknowledged in her 1998 testimony that her earlier testimony was not entirely accurate. She noted that even though $5,000 had been paid by the date of her meeting with McDougal, there still was $893 outstanding. Even if Mrs. Clinton was referring to this $893 difference when she said she went to discuss an old bill with McDougal in April 1985, the evidence shows that the balance was not expected to be paid and that payment of that portion the bill was not a prerequisite to Rose representing Madison Guaranty.

v. Mrs. Clinton as Billing Partner.

In 1995, Massey testified that he did not ask Mrs. Clinton to become the billing partner:

> Q. All right. Mr. Massey, do you remember anything about you, Rick Massey, affirmatively going to Hillary Clinton and asking Hillary if she would become the billing partner?
>
> A. No, I do not.[1878]

Massey testified, consistent with his prior testimony, before the Senate Whitewater Committee:

> Q. Did you approach Mrs. Clinton and ask her to be the billing attorney on the Madison Guaranty account?
>
> A. Sir, I don't recall that.[1879]

[1877] Foster Chronology of the Rose Law Firm Representation of Madison Guaranty Savings & Loan (Mar. 26, 1992) (Doc. Nos. 1180-00000236 through 240).

[1878] Massey 11/7/95 GJ at 95-96.

[1879] Senate Whitewater Comm. Hearing, supra note 147, at 29 (Jan. 11, 1996) (testimony of R. Massey).

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Massey was asked whether he would have remembered asking Mrs. Clinton to be the billing partner:

Counsel.	And do you know how Mrs. Clinton came to be the billing partner?
Massey.	No.
Counsel.	You didn't ask her to be the billing partner?
Massey.	I don't recall asking her to be the billing partner.
Counsel.	And it's not the kind of thing --
Chairman D'Amato.	Mr. Massey, . . . If you asked Mrs. Clinton to be the billing partner, wouldn't that be a thing -- notwithstanding that it was 10 or 11 years ago -- that you would recall?
Massey.	That's fair.
	. . . .
Chairman D'Amato.	Did you ask her to be the billing partner?
Massey.	I don't think so.
Chairman D'Amato.	All right. That's better than I don't recall.
Mr. Massey.	I should remember it. It could have happened. I don't think I did. That's the best I can do.
Chairman D'Amato.	And you had to slip in it could have happened. I mean, Mr. Massey, you get this matter. Mrs. Clinton is not in your section. Now you're going to bring me to develop how it is that that would not be consistent at all. Mrs. Clinton is not in this section. She doesn't do securities work. She's not in the area, the general area of the firm that handles this work; is that correct?
Massey.	No, she was not.
	. . . .

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Chairman D'Amato. Okay. So consequently, if you were going to ask her, a partner outside of this area, to be the billing partner, wouldn't you recall that?

Massey. Yes, sir, that's correct.[1880]

4. Analysis of the Rose Retainer.

Substantial evidence corroborated McDougal's version of events. Mrs. Clinton's Rose income had declined in the years prior to the alleged jogging incident -- a fact which McDougal should not have known independently. One witness, Bill Henley, partially corroborated McDougal's testimony by relating McDougal's contemporaneous disclosure of his meeting with Governor Clinton. Similarly, Susan McDougal's unsworn press interviews also show McDougal contemporaneously told her about the meeting. President Clinton did not contradict McDougal, merely saying he had no recollection one way or the other.[1881]

Nonetheless, McDougal's statements and testimony must be viewed with caution. McDougal was a confessed perjurer, and no independent witness could entirely corroborate his testimony.

Mrs. Clinton's various descriptions of events about the Rose retainer had substantial inconsistencies. Latham, Massey, and Knight disagreed with Mrs. Clinton's statement that Massey brought in the business through Latham. Latham, Massey, and Knight consistently said that McDougal, not Latham, hired the lawyers. Massey told the grand jury that he was not the

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[1880] Id. at 170-72 (testimony of Massey).

[1881] This Office discounted the testimony of Moles as so at variance with other known facts as lacking in significant probative value.

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source of the Madison Guaranty business.[1882]

Massey's testimony was corroborated by documents. For example, Madison Guaranty's regular firm, Mitchell Williams, had already begun work on the broker-dealer and preferred stock matters prior to Rose's retention.[1883] A Mitchell Williams attorney had already contacted the ASD about the matter before it was turned over to Rose -- a sequence of events unlikely for Latham to have caused.[1884] John Selig, the Mitchell Williams partner who did Madison Guaranty's legal work was formerly head of the ASD.[1885] Beverly Bassett, then the current ASD head, had been a lawyer at Mitchell Williams.[1886] In addition, Jim Guy Tucker, the billing partner at Mitchell Williams, was a long-time friend and business partner of McDougal.[1887] It seems unlikely that Latham sought to have a new associate at Rose represent Madison Guaranty before the ASD rather than Selig, a former head of the ASD for whom Bassett had previously worked

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[1882] Massey's testimony before the Senate Whitewater Committee was more equivocal, raising doubts about the accuracy of either statement. The balance of the evidence (including the unlikelihood that Massey would forget his first client ever) supports the conclusion that Massey was not the source of Madison's business, though his confirmed lunch approach to Latham could have played some role in McDougal's decision to hire Rose.

[1883] Letter from Mitchell, Williams, Selig, Jackson & Tucker Law Offices to Sarah Hawkins, Senior Vice-President, Madison Guaranty, enclosing a Preliminary Offering Circular (Dec. 3, 1985) (Doc. Nos. 155-00001504 through 1506). More than one month later, Mitchell Williams opened another matter on Madison Guaranty's account, entitled "Broker-Dealer." (Doc. Nos. 155-00001507 through 1509). The broker-dealer file was also empty. These were the ninth and tenth matters opened by Mitchell Williams for Madison Guaranty.

[1884] Id.

[1885] Selig 7/18/96 GJ at 3-4.

[1886] Letter from Bill Clinton, Governor of Arkansas, to Beverly Bassett, Wright, Lindsey, and Jennings attorney (Jan. 22, 1985) (Doc. No. DEK219149). The Governor's Office issued a press release announcing Bassett's appointment (Jan. 18, 1985) (Doc. No. 319-00028649).

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simply as a favor to his friend Massey. McDougal offered a simpler and more direct explanation: He hired Rose because he thought the Governor's wife would have influence in front of a state agency.[1888]

Also significant is the documentary evidence showing that McDougal's "unpaid" bill had been paid and settled six months before Mrs. Clinton met with McDougal in April 1985. If Mrs. Clinton's testimony reflected her view that the entire bill was not paid, $5,000 had been paid. If Mrs. Clinton's account testimony reflected her view that only the unpaid $893 expense portion of the bill remained unpaid, that portion was never expected by Rose to be paid.

There is a plausible explanation for Mrs. Clinton's testimony. In late 1983, Mrs. Clinton was asked by her fellow partners at Rose to intercede with McDougal about payment of the Bank of Kingston bill.[1889] This earlier contact with McDougal may have been the contact Mrs. Clinton remembered, though she mistakenly confused it with the 1985 meeting she and McDougal agreed occurred. In the judgment of the Independent Counsel, this plausible explanation for Mrs. Clinton's confusion would create a reasonable doubt in a trier of fact's mind about the willfulness of Mrs. Clinton's factually inaccurate statements about going to see McDougal in April 1985 about a billing dispute that had long since been settled.

On balance, the weight of evidence supports McDougal's version of events. But in the judgment of the Independent Counsel, the weight of the evidence simply is not sufficient to

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[1887] See Tucker 3/18/99 GJ at 21-23.

[1888] J. McDougal 8/1/96-6/1/97 Int. at 15.

[1889] See H. Clinton 4/25/98 Depo. at 23-24.

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warrant prosecution of Mrs. Clinton. Moreover, with McDougal's death in March 1998, the most important percipient witness became unavailable. For these reasons and in the exercise of discretion, the Independent Counsel declined prosecution as to Mrs. Clinton's testimony and how Rose was hired by Madison Guaranty.

B. Mrs. Clinton's Madison Guaranty Work.

The legal work that Rose and Mrs. Clinton did for Madison Guaranty was also scrutinized by federal investigators. Rose's legal work for Madison Guaranty coincided with some of the most serious frauds perpetrated by the Madison Guaranty insiders, including the IDC/Castle Grande transactions, which eventually caused losses of more than $4 million to the institution.[1890]

1. Work Related to the IDC and Castle Grande Transactions

Rose billing records sought for many years by this and other federal investigators were finally produced by Mrs. Clinton's attorneys in January, 1996. These long sought records provided more detail about Mrs. Clinton's legal work for Madison Guaranty than was previously known. The Rose billing records showed six separate "matters" worked on by its lawyers for Madison Guaranty. Matter 5 was called "IDC," for Madison Financial's purchase, development, and resale of a 1,050-acre parcel of land from the Little Rock IDC. The IDC property was developed under the name "Castle Grande." As addressed in detail in Volume II, Part B, Chapter 1 of this Final Report, these transactions involved substantial misconduct, discovered by federal

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[1890] Pillsbury Madison & Sutro LLP, A Report on Certain Real Estate Loans and Investments Made by Madison Guaranty Savings & Loan and Related Entities: Prepared for

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regulators in 1986.

The billing records showed that Mrs. Clinton billed Madison Guaranty for time working on various aspects of these transactions, such as billing for her conferences with Seth Ward, the admitted straw man for the original purchase of the IDC property who executed a series of "loans" compensating him for that criminal role, while disguising the payments as "loans" to deceive federal examiners auditing Madison Guaranty.

2. Mrs. Clinton's Work According to the Billing Records.

The billing records show Mrs. Clinton's legal work on the IDC transactions between November 14, 1985 and June 10, 1986.[1891] Her greatest number of billing entries occurred between November 14, 1985 and January 7, 1986.[1892] During that seven-week period, Mrs. Clinton billed Madison Guaranty for twelve conferences with Seth Ward on the IDC transaction.[1893] She also billed for two conferences with Webb Hubbell in November 1985.[1894] The billing entries for these conferences do not say what was discussed. Mrs. Clinton later said she did not remember the details of these conferences, though she thought they were related to

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Resolution Trust Corporation 29 (Dec. 19, 1995).

[1891] Rose Law Firm Billing Records (Jan. 1986 through June 1986) (Doc Nos. DEK015013 through 15019, 015021 through 15022, 015029 through 15032, 015038).

[1892] Rose Law Firm Billing Records (Nov. 1985 through Jan. 1986) (Doc Nos. DEK014991, 015009, 015012, 015014, 015016 through 15019).

[1893] Id.

[1894] Rose Law Firm Billing Records (Jan. 1986) (Doc. Nos. DEK015014, 015008 through 15009).

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legal research concerning Castle Grande's proposed brewery and the sewer and water utilities.[1895] Seth Ward testified that he did not remember having any discussions with Mrs. Clinton.[1896]

Before January 30, 1986, Mrs. Clinton charged Madison Guaranty for an additional 14.5 hours of legal work on the IDC matter that was otherwise unrecorded on Rose's other records. On January 30, 1986, Rose (by Mrs. Clinton as the billing partner) sent Madison Guaranty five bills for legal services -- one for each open matter.[1897] The IDC draft bill computerized billing memorandum stated that Mrs. Clinton performed $912.50 worth of legal work on the IDC matter.[1898] Mrs. Clinton made a handwritten change to the draft billing memorandum to increase billing for her work to $2,731.25.[1899] Mrs. Clinton did not write down what additional work she had performed to justify this additional charge or when that work had been performed. No supporting details for this increase were ever entered into the Rose billing computer and Mrs. Clinton's personal timesheets for 1985 to 1986 were never produced to this or any other investigation, though they were sought.[1900]

The additional work Mrs. Clinton might have performed could possibly be determined by comparing the computerized billing memorandum with the invoice Rose sent to Madison

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[1895] H. Clinton 2/14/96 FDIC Int. at 72.

[1896] Ward 1/17/96 GJ at 62; Ward 2/12/96 Senate Whitewater Comm. Depo at 44.

[1897] Rose Law Firm Billing Records (Jan. 1986) (Doc. Nos. DEK015008, 015011, 015013, and 015016).

[1898] Rose Law Firm Billing Records (Jan. 1986) (Doc. No. DEK015017).

[1899] Id.

[1900] See Letter from Alden L. Atkins, attorney representing Rose to W. Hickman Ewing Jr., Deputy Independent Counsel (Feb. 9, 1996) (Doc. No. 105-00092699).

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Guaranty. The original draft billing memorandum entry for November 14, 1986 stated: "Conference with Seth Ward regarding purchase from Brick Lile."[1901] That entry was initially billed to Matter #4 (General), but Mrs. Clinton edited the draft memorandum to move it to Matter 5 (IDC).[1902] The final January 30, 1986 invoice for Matter #5 contained the description "Conference with Seth Ward regarding purchase from Brick Lile and proposed industrial development on site." Some of the 14.5 missing hours of work could have been for the "proposed industrial development on site." This Office was unable to determine the basis for the $1,818.75 increase in Mrs. Clinton's IDC billings for work performed through January 30, 1986. It is possible that the billing records do not accurately reflect Mrs. Clinton's work. Mrs. Clinton herself has said some of the entries were wrong.

This Office also examined whether Hubbell's IDC work was billed under Mrs. Clinton's name. Hubbell had substantial contact with Ward on the IDC matter. File storage records at Rose show Hubbell maintained a file entitled "IDC: UNION TOWNSHIP RESEARCH."[1903] In his August 1996 testimony, Hubbell admitted advising Ward on most significant aspects of the IDC transaction.[1904] Don Denton[1905] and Ward's accountant, Mike Schaufele, corroborated

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[1901] Rose Law Firm Billing Records (Nov. 22, 1985) (Doc. No. DEK014991).

[1902] Id.

[1903] Rose Law Firm Computer Printout by file name and attorney name (undated) (Doc. No. RIC 1212395).

[1904] Hubbell and Ward discussed: 1) the initial IDC purchase, Hubbell 8/22/96 GJ at 24, 79; 2) letter agreements between Ward and McDougal, id. at 35-36, 41-43; 3) the brewery, id. at 59; 4) Ward's purchase of IDC property, id. at 49; 5) the sewer and water facilities, id. at 24, 60, 108; 6) payment of Ward's commissions and the mechanism for payment including the concept of set off loans, id. at 49-50, 67, 98; 7) tax consequences of Ward's relationship with Madison, id.

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Hubbell's testimony.[1906]

Hubbell denied billing time or doing legal work for Madison Guaranty through another attorney, such as Mrs. Clinton.

> Q. Did you ever bill for any work for Madison Guaranty Savings & Loan or Madison Financial in 1985 and 1986?
>
> A. Not that I remember, and I haven't seen anything that shows that I did. I mean, I'm hesitant to be 100 percent sure of anything anymore, but if I could [sic] 100 percent sure, I don't remember ever billing Madison. I've never seen anything or heard anybody say that I did.
>
> Q. Would you ever have billed Madison -- and that would include Madison Guaranty and Madison Financial Corporation -- indirectly, that is, through someone else? That is, you do work and you put it under someone else's name or in some other category on the bill, not under Web Hubbell legal services?
>
> A. No, I don't think I have.[1907]

3. Mrs. Clinton's Recollection of Madison Guaranty Work.

Mrs. Clinton testified in 1995 that she remembered performing no legal work that she did for Madison, other than before the ASD:

> Q. [F]rom the time of the advance against fees or retainers started in May of '85 until it was terminated in July of '86, do you recall today doing any other work on anything other than the matter with the Arkansas Securities Department?
>
> A. I have a recollection of the firm during that time doing some other minor matters for Madison [Guaranty], but I couldn't tell you what they were

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at 57-59, 90; and 8) the option agreement. Id. at 57-59, 93.

[1905] Denton 8/20/96 GJ at 77.

[1906] Schaufele 5/27/88 Depo. at 13, Ward v. Madison Guaranty, No. 87-7580, (E.D. Ark.).

[1907] Hubbell 8/22/96 GJ at 27-28.

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right now.[1908]

In 1993, Rose recreated the Madison Guaranty representation from fee allocation documents in the firm's files.[1909] Mrs. Clinton was questioned using the recreated fee allocation. For January 1986, the allocation showed Mrs. Clinton was credited with earning a fee of $2,731.25 for Stock Offering & IDC and $802.50 for Stock Offering.[1910] Mrs. Clinton was asked if she had worked on the stock offering matter, and she said: "I must have done something or it could have gotten misallocated. There was a -- I think IDC was something different from the stock offering, but I don't have any memory of that."[1911] This exchange followed:

> Q. I believe -- and I'm sorry that I don't have a copy, Mrs. Clinton, but the IDC, I think, had to do with Castle Grande. And there was a memo in there or something on a wet/dry issue.
>
> A. Uh-huh.
>
> Q. And there is actually a memo from Rick Donovan to you. Do you recall anything what that would be about.
>
> A. I don't recall specifically, but there was some property that Madison either owned or was trying to develop that was partially in a township that was wet, or something like that. That's all I remember right now.[1912]

[1908] H. Clinton 4/22/95 Depo. at 30.

[1909] R. Clark 12/5/95 GJ at 20-22. Some of these documents had been removed in 1992 by Hubbell and Foster. See Hubbell 5/7/96 GJ at 15, 18-19; Rose storage facility checkout log (Mar. 24, 1992) (Doc. No. 105-00054216).

[1910] Recap of fees from Madison Guaranty Savings & Loan Final Recap at 2 (for period 1983 through Sept. 1987) (Doc. No. 105-00083353 through 354). H. Clinton 4/22/95 Depo. at 41. When discovered, the billing records listed that in fact the entire $2,731.25 was for the IDC matter. Rose Law Firm Billing Records (Jan. 21, 1986) (Doc. No. DEK015017).

[1911] H. Clinton 4/22/95 Depo. at 41.

[1912] Id. at 42-43.

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Mrs. Clinton was asked whether she thought the fees had been allocated to her because she had brought in the business, or because she had done the work. She replied: "Well, I did work. I just can't remember 10 years from the work exactly what the work was."[1913]

4. Denton's Explanation of His April 7, 1986 Phone Conversation with Mrs. Clinton

a. The Billing Records and Denton's Testimony

The billing records showed that Mrs. Clinton billed Madison Guaranty for an April 7, 1986 telephone conversation with Don Denton.[1914] That was the day that Madison Guaranty and Ward executed the second set of "cross notes" that deceived the federal examiners about Ward's compensation.[1915] Mrs. Clinton's time was billed to the IDC matter.[1916] In her 1996 RTC

[1913] Id. at 43. In Mrs. Clinton's FDIC interview on November 10, 1994, she was questioned about one of the few IDC bills investigators then had. Mrs. Clinton said she did not remember the IDC matter, but presumed her name was listed on the bill as billing partner. H. Clinton 11/10/94 FDIC Int. at 3. The investigators asked Mrs. Clinton to give her answers under oath, which she declined. Id. at 1. The FDIC also asked Mrs. Clinton about a January 23, 1986 memo from Rick Donovan to her about the wet/dry township issue, and she said the matter was handled by Rick Donovan. H. Clinton 11/10/94 FDIC Int. at 3-4.

[1914] Rose Law Firm Billing Records (May 13, 1986) (Doc. No. DEK015030).

[1915] Denton 8/20/96 GJ at 64-65; Ward $300,000 "loan" to Madison Financial (Apr. 7, 1986) (Doc. No. 56-00126454); Ward $70,943.47 "loan" to Madison Financial (Apr. 7, 1986) (Doc. No. 396-00000525); Clark 7/26/97 Int. at 3-4; FDIC-OIG Supplemental Report on Rose Law Firm Conflicts of Interest, WA-94-0016 at ii-iii (Sept. 20, 1996). In summary, on March 31, 1986, Ward was paid $400,00 by Madison Guaranty as compensation for Ward's role as straw man in the IDC purchase. To conceal the true nature of the transaction from the examiners who were then auditing Madison Guaranty, two cross notes were prepared: one note purported to evidence a loan from Ward to Madison Financial for $400,000; the other purported to evidence a loan of $400,000 from Madison Guaranty to Ward. On April 7, 1986, the cross loans were replaced with new notes. The $400,000 loan note from Ward to Madison Financial was replaced with separate notes for $300,000 and $70,943.47. The $300,000 note corresponded to the

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interview, when asked what she knew of the cross notes, Mrs. Clinton testified: "I don't recall knowing anything about these loans."[1917] Don Denton said he received a telephone message on April 7, 1986, from Sandra Moody, Hillary Clinton's secretary, asking him to call Mrs. Clinton.[1918] Denton returned the call and spoke with Mrs. Clinton about Ward's loan to Madison Financial. On April 7, 1986, Mrs. Clinton billed the IDC matter for a telephone conference with Denton.[1919] Denton later said he vaguely remembered that Mrs. Clinton was preparing the note from Ward to Madison Financial and that she was calling for Hubbell.[1920] Denton said he told her the note had already been prepared and executed.[1921] Denton said Mrs. Clinton asked him to send her a copy of the note, or both notes, for her review.[1922] Denton said they may also have discussed Ward's cross loans -- the $300,000.00 and $70,000.00 loans to Madison Financial -- that replaced the $400,000.00 loan.[1923] Denton said he told Mrs. Clinton "there could be a problem with the notes as they constituted in effect a parent entity fulfilling the obligation of a

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amount of Ward's supposed "commissions" -- his compensation for being straw man on the transaction -- and the $70,943.47 corresponded to the amount that remained outstanding from Ward's initial purchase of IDC.

[1916] Rose Law Firm Billing Records (Mar. 28, 1986) (Doc. No. DEK015022).

[1917] H. Clinton 2/14/96 FDIC Int. at 81.

[1918] Telephone message slip to Don Denton from Sandra Moody (Apr. 7, 1986) (Doc. No. DD00000241).

[1919] Rose Law Firm Billing Records (entry for Apr. 7, 1986) (Doc. No. DEK015030) (reflects 0.2 hours billed by Mrs. Clinton for "Telephone conference with Don Denton").

[1920] Denton 6/20/96 Int. at 5-6.

[1921] Denton 8/20/96 GJ at 64.

[1922] Id.

[1923] Id. at 65-66.

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subsidiary." He said she "summarily dismissed" his concern in a way he understood meant that she wanted him to manage savings and loan matters, and leave legal matters to her.[1924]

Denton described their conversation as follows:

Q. Tell the ladies and gentlemen of the grand jury what happened when you called Sandra in Hillary Clinton's office back.

A. I returned the call and was immediately connected with Hillary Clinton. We exchanged a couple of hellos, how are you, The conversation was very short. I was told that she was working on a transaction involving Seth Ward and Madison Financial, and that she was . . . [seeking] information so she could document the obligation that Madison owed Seth. In other words, the $400,000 obligation. She understood that Seth had been loaned the 400 by Madison Guaranty Savings & Loan. And she was working on a transaction that would document Madison Financial's obligation to pay Seth his commissions, Seth Ward his commissions.

Q. What type of document was she talking about?

A. She was talking about a promissory note.

Q. So what was your response to what she was saying?

A. I cautioned her that the Madison Financial obligation was not a direct set-off or direct tie to Madison Guaranty's loan. I pointed out that Madison Guaranty had loaned Seth the money, but Seth was owed money by Madison Financial Corporation. She rather summarily dismissed my concerns and indicated that she'd take care of the lawyering.

Q. What happened after that?

A. I informed her that the $400,000 note from Madison Financial -- excuse me -- from Madison Financial to Seth had already been prepared. And she asked that we supply a copy of that note, which I did. I had an employee of Madison deliver that note.

Q. To whom?

[1924] Id. at 64.

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A. To the Rose Law Firm.

Q. And then also the note that you had prepared, was it the first note on April -- pardon me -- on March 31st, or was it a note drafted on that day, April 7th?

A. I don't recall which it would have been. It was -- as I recall, it was the $400,000 note. I'll note now that the replacement notes were also dated April 7th, so I don't recall specifically which ones were delivered.

. . . .

So I think on April 7th, two notes were replaced, the 300 plus the 70, to take care of the remaining $300,000 balance on the original note plus the $70,000 note. And it more clearly identified them. Rather than a total note for 400, it broke it down into two notes, with those specific amounts, the 300 and the 70,000 note.

Q. Did you and Mrs. Clinton discuss that in your telephone call on April 7th?

A. I don't recall whether we did or not.

Q. Your memory is you just discussed the $400,000 note?

A. That was the reason of her inquiry. I may or may not have informed her that the 300 plus the 70 had already been done. I just don't recall now.

. . . .

Q. Who did you believe was Mr. Ward's attorney at that time?

A. Webb Hubbell.

Q. Who did you think that she represented at the time you received the phone call from her on April 7th?

A. Seth Ward.[1925]

Denton did not remember this conversation until after the billing records had been found.

[1925] Id. at 63-67.

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Prior to that time, Denton had said he remembered no conversations with Mrs. Clinton.[1926] Mrs. Clinton's counsel, in his letter transmitting her affidavit to the Senate, criticized Denton's "sudden recollection of a twelve-minute phone call with Mrs. Clinton over ten years ago" rendering, he claimed, the memory "wholly unreliable."[1927]

b. Mrs. Clinton's Recollection of the Denton Conversation.

Mrs. Clinton addressed the Denton conversation through her attorney in a June 17, 1996 letter to the Senate Whitewater Special Committee after her attorney produced the billing records. That letter said she thought the April 7 phone conversation related to another Madison Guaranty matter -- the Babcock matter.[1928] The letter said the April 7 telephone conference was about Babcock because notes underneath the telephone message slip produced by Denton to the Senate were about Babcock.[1929] Mrs. Clinton billed the Babcock file for 1.5 hours on April 9, 1986 for a conference with Don Denton.[1930]

In 1998, Mrs. Clinton testified about the Denton phone call:

> Q. . . . . If you look at the record on page DEK015030, and I've actually marked this page separately, let me hand you this document. There is an entry on the billing records on 4/7/86 for a telephone conference with Don Denton. Can you tell us what that's about?

[1926] Id. at 66.

[1927] Letter from David Kendall, the Clintons' personal attorney, to the Senate Whitewater Special Committee at 2 (June 17, 1996).

[1928] Id. at 4-5 (June 17, 1996). The Babcock matter was a collections/loan workout -- unrelated to IDC -- that Mrs. Clinton worked on for Madison Guaranty with Don Denton's help.

[1929] Id.

[1930] Rose Law Firm Billing Records (May 13, 1986) (Doc. No. DEK015036).

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A. No, I can't. From looking at the billing records, it merely states telephone conference with Don Denton. I believe that it had to do with a matter referred to as Babcock in the billing records.

Q. Would you agree that it's listed under the matter IDC?

A. I would agree with that.

. . . .

Q. Now, Mrs. Clinton . . . Mr. Denton has stated that on this call, that there was a phone message from you to him on that day and that you and he discussed certain loan documents flowing from Madison Financial to Seth Ward, and then a loan going back from Seth Ward to Madison. Did you do that?

A. I do not believe that happened in a 12-minute telephone conference on April the 7th, 1986.

Q. Your counsel has publicly stated -- I don't know if he put this in any kind of written form, I think he did, I think I read that at some point -- perhaps to the Senate, that he believes that Mr. Denton was not truthful about that; in fact, that there was a message slip that Mr. Denton had but that it was laid on top of some Babcock documents.

Do you recall, did you participate in that response?

A. I certainly approved of that response that my attorney sent, I think, to the Senate committee.

Q. And is it your position that the message slip that he had was actually a copy and it was shown that it was on top of the Babcock documents, and therefore reinforced a belief that maybe he wasn't telling it like it was?

A. Well, I don't want to draw any conclusions. I can only say that based on the billing records, and based on the information I have seen, if you look at the 4/7/86 entry, which is the 12-minute telephone conference, and yes it was billed to IDC, but I don't think that was correct, because it was followed two days later by an hour and a half conference with Mr. Denton concerning the loan participations that Savers Savings and Loan had that Madison was interested in resolving. And then all of the time on Babcock concerns those loans and Mr. Denton is one of the people that I spoke with

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and had conferences with.

So, I believe, based on the evidence that I see and the fact that Mr. Denton was involved in this Babcock matter, that that is what that first telephone conference also pertained to.

Q. Why wasn't it billed to number four, General, or some other matter?

A. That's a good question, Mr. Ewing, and as I've looked at these billing records carefully, over the last days, there are a lot of questions I have about that. There are a number of errors, and I attribute it to secretarial, clerical, accounting errors. But I think that's where the telephone conference with Mr. Denton rightly belongs.[1931]

c. Other Evidence of Mrs. Clinton's Degree of Involvement with the IDC Transaction and Ward Loans.

One other document arguably shows Mrs. Clinton's knowledge of Ward's cross-loan agreement with Madison and his interest in Castle Grande - a page of notes written by Rick Donovan when he was first assigned the wet/dry research project by Mrs. Clinton.[1932] The notes, however, are subject to more than one interpretation. The undated notes list two research projects Mrs. Clinton assigned to him - an unrelated project on a writ of garnishment and:

2. Seth Ward

property purchased in Big Rock Township

ABC says Union Township & that is dry . . . [1933]

The notes go on to discuss the project and how Donovan would decide what property was wet or

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[1931] H. Clinton 4/25/98 Depo. at 125-27.

[1932] Donovan 12/6/95 GJ at 6-7.

[1933] Donovan's handwritten notes (undated) (Doc. No. 105-00003697).

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dry south of the Arkansas River.[1934]

The phrase "property purchased" could modify the heading "Seth Ward" -- in which case the notes would confirm that Mrs. Clinton knew Ward owned some of the property. Another interpretation, though, is that "Seth Ward" refers generally to the source of Mrs. Clinton's information and her contact at Madison, perhaps to let Donovan know who to contact if he needed more information to complete his legal research.

5. Mrs. Clinton's Statements about the May 1, 1986 Option Agreement.

a. Background.

The FDIC concluded that the May 1, 1986 option agreement between Madison Financial and Seth Ward was intended by Ward and other insiders to deceive the examiners about the true nature of Ward's compensation, and that it accomplished its intended effect.[1935] Investigators were particularly interested in evidence related to the option when the billing records showed that Mrs. Clinton billed Madison Guaranty for preparing the option.[1936] On May 1, 1986, Mrs. Clinton billed Madison Guaranty on the IDC matter two hours for:

> conference with Seth Ward; telephone conference with Seth Ward; telephone conference with Mike Schaufele; prepare option.[1937]

Mrs. Clinton testified that it was not unusual for Ward to stop by Rose demanding legal

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[1934] Id.

[1935] FDIC Supplemental Report at V.

[1936] Id. at IV.

[1937] Rose Law Firm Billing Records (May 13, 1986) (Doc. No. DEK015032).

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work immediately.[1938] It appears that after April 29 (Tuesday), when one of the federal examiners followed up on the option agreement that Denton had told the examiner was being prepared,[1939] Ward went to Rose Law Firm in person on May 1, 1986 (Thursday). This is corroborated by Mrs. Clinton's two distinct billing references: one for a "conference with Seth Ward," and the other for a "telephone conference with Seth Ward"[1940] -- the more explicit "telephone" reference in the second entry implying that the "conference" reflected in the first entry was in person.

Hubbell was out of town in an unrelated trial.[1941] Ward may have asked Mrs. Clinton to draft the option simply because Hubbell was gone. Billing records show that Mrs. Clinton may have drafted the option after making phone calls to both Ward and his accountant, Mike Schaufele.[1942] The option was signed and notarized on May 5, 1986.[1943] The option contained Mrs. Clinton's Rose word processing code.[1944]

[1938] H. Clinton 2/14/96 FDIC Int. at 13.

[1939] Denton 3/19/98 GJ at 21.

[1940] Rose Law Firm Billing Records (May 13, 1986) (Doc. No. DEK015032).

[1941] Tucker 3/18/98 GJ at 187.

[1942] Ward 1/17/96 GJ at 31-32. Schaufele later testified that he did not remember his conversation with Mrs. Clinton but thought that the only topic he would have discussed with her was Ward's tax liability. See Schaufele 1/30/96 GJ at 27-29. Ward testified that he has no recollection of any conversation with Mrs. Clinton. Ward 1/17/96 GJ at 82-83.

[1943] Option to Purchase Real Estate Agreement Version #1 (May 1986) (Doc. Nos. 99-00043196 through 43201); Option to Purchase Real Estate Agreement, Version #2 (May 1986) (Doc. Nos. 99-00043202 through 43208).

[1944] See Option to Purchase Real Estate (May 5, 1986) (Doc. No. 99-0043197). In the bottom-right corner is the code "0190g," Mrs. Clinton's word processing code.

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Denton gave a copy of the option to examiner Darlene Ford on May 7, 1986.[1945] Ford reviewed the legal description of the property and noticed it was wrong.[1946] The option did not refer to Holman Acres, but to property already purchased by Davis Fitzhugh on February 28, 1986.[1947] Ford pointed out the error to Denton, who had the first two pages re-typed to describe Holman Acres as the subject property.[1948]

This Office could not identify the source of the incorrect legal description. Rose files that might have shown how the error occurred were destroyed at Mrs. Clinton's direction in 1988, one of which was titled "Ward Option."[1949]

b. Mrs. Clinton's Statements.

Mrs. Clinton was first questioned about the option agreement on December 21, 1995, when the RTC sent her supplemental interrogatories.[1950] The RTC learned on December 21 that

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[1945] Copy of option with Ford's handwritten notes (May 1, 1986) (Doc. No. 99-00043196).

[1946] Ford 7/29/96 Int. at 3.

[1947] This same property description appears on an attachment to a release deed given to Seth Ward by Madison Guaranty dated December 30, 1985. Martha Patton, Webb Hubbell's secretary at the Rose Law Firm, said she typed the attachment. Patton 9/25/96 Int. at 2.

[1948] Ford's notes on her copy of the option she received from Denton state: "Talked to Don Denton. He said that this land description goes with the Fitzhugh mortgage property and that this description is in error. He said it should be the property known as Tract 27 and 28 of Holman Acres on which Ward [unintelligible]." Copy of Option with Ford's Handwritten Notes (May 1, 1986) (Doc. No. 99-00043196); see also Ford 7/29/96 Int.; Clark 7/26/96 Int. Denton had the first two pages of the incorrect option re-typed. Denton 6/26/96 Int. at 7. Denton's corrected version is referenced as Doc. No. 99-00043202.

[1949] Memo from Mary Russell, secretary to Mrs. Clinton, to Mrs. Clinton (July 21, 1988) with attached list of files destroyed (Doc. No. FDICHRC 0163).

[1950] H. Clinton 1/20/96 RTC Interrog. Resp. at 2-3.

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the Rose word processor identification code on the document ("190g") was hers.[1951] Mrs. Clinton answered the December 21, 1995 interrogatories on January 20, 1996, using information contained in the recently produced billing records. The interrogatories asked sixteen questions about the option agreement, thirteen of which Mrs. Clinton responded to in one omnibus response:

> I have reviewed document SW1-070 through SW1-074 (which appears to be an option agreement dated May 1, 1986, on a 6.6667 acre parcel of land in Pulaski County, Arkansas) and document SW1-063 through SW1-068 (which appears to be an option agreement dated May 1, 1986, on land described as "[p]art of Tracts 27 & 28, Holman Acres, Pulaski County, Arkansas"). I have no recollection of these documents or the transactions they reflect. I do not recall what my word processing code was in 1986. My time records reflect the following entry for May 1, 1986, representing two hours of work done for Madison Guaranty on the "General" account: "Conference with Seth Ward; telephone conference with Seth Ward concerning option; telephone conference with Mike Schauffler [sic]; prepare option." I know that Mike Schaufele is a CPA at L. Cotton Thomas & Company, and I believe he was Mr. Ward's CPA at one time. Based upon the May 1, 1986, entry in my time records, I believe that I did some work on these documents. The client was Madison Guaranty or Madison Financial, not Seth Ward. I have no recollection of what this work was, who originally prepared the option documents, how many pages of the documents were typed at the Rose Law Firm, what the circumstances were which led to the drafting of these options, or whether either of the options was ever exercised. I was in the litigation section of the Rose Law Firm. Although I have no specific recollection of this matter, I do not believe I would have drafted such real estate documents from scratch, particularly in a two-hour period that also contained phone calls and conferences. I have no recollection of who may have asked me to prepare these documents, or, in particular, if Messrs. McDougal, Latham, Ward, or Hubbell asked me to prepare or work on these documents, although it is possible that one or more of them did so. I have no recollection of discussing these documents prior to March 11, 1991, although I believe, based upon my time records, that I probably did in 1986 when the documents were apparently prepared. I do not know what

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[1951] Pillsbury Madison & Sutro LLP, A Supplemental Report on the Representation of Madison Guaranty Savings & Loan by the Rose Law Firm: Prepared for Federal Deposit Insurance Corporation 125, n.308 (Feb. 25, 1996).

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relationship there is, if any, between these two option agreements.[1952]

In her February 14, 1996 FDIC interview, Mrs. Clinton was asked about the option agreement:

Q. Let's talk for a minute about the option that was drafted on May 1, 1986 . . . . Now, the billing records and the word processing codes indicate that you have something to do with the drafting of this option. But you're a litigator, as you've told us. Had you had occasion before this to draft options for real estate purposes?

A. No. That was not part of my practice, and I have no recollection of doing this. I can only go by what the billing records describe. And I think it's unlikely that I would have drafted this option from scratch, that I would have had [a] conversation with Mr. Ward and Mr. Schaufele and a conference with Mr. Ward all within a two-hour period.

Q. Mr. Hubbell suggested in testimony that the Rose Firm maintained form files that were available to people when they were drafting various kinds of legal documents and at least made the suggestion that this was something he or others might have used for a purpose like this. In your practice, would you on occasion, use these form files when you had to draft documents with which you were unfamiliar?

A. I might have on occasion. I don't have any recollection of having done it in this instance. I don't know what had already been prepared. I don't have any recollection of the two hours at all, other than what the time records say.

Q. Mr. Donovan, in his testimony, said rather colorfully, for him, would have regarded drafting an option as malpractice waiting to happen. And I wonder, is what you're saying that this is not something you would have been comfortable doing on your own? You would have involved somebody else?

A. I have no recollection of what occurred, Mr. Ericson. It's also possible that since only two hours were recorded, that Mr. Ward had something that had already been prepared by somebody else and wanted my secretary to make

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[1952] H. Clinton 1/20/96 RTC Interrog. Resp. No. 33.

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some changes on it. That was not uncommon for Mr. Ward, and I would have talked to him about it and maybe he needed some piece of information from Mr. Schaufele. I'm totally speculating now, but Mr. Ward often walked around our firm asking our people to help out on certain legal matters that were pressing, so far as he was concerned, and insofar as we were able we tried to accommodate him.

Q. Do you have any recollection of ever talking to Mr. Schaufele about the IDC property or Mr. Ward's work with respect to it?

A. I have no recollection. All I can point to is the billing record that reflects a telephone conference with Mr. Schaufele.[1953]

Mrs. Clinton testified on the same subject at her 1998 deposition:

Q. Mrs. Clinton, we -- the bank examiners were in the bank during this time. There is evidence that there were these cross loans where Mr. Ward was advanced monies by Madison, but to cover the obligation, he then on paper loans money back to Madison, but it was not funded. That later, on May 1st, '86, there was an option agreement put in place of this document.

Now, we know now that you apparently drafted the option agreement that took the place of this document here.

A. I don't believe I drafted the option agreement, Mr. Ewing.

Q. But you billed for it?

A. It, it was billed for. That is correct, along with several other activities in a two-hour period on May the 1st.

Q. Did you actually bill the client and list on the records of your law firm, draft option agreement?

A. Draft option agreement is what it says, that's right. But I do not believe I drafted that option agreement from scratch. That would not be something I would do.[1954]

[1953] H. Clinton 2/14/96 FDIC Int. at 83-85.

[1954] H. Clinton 4/25/98 Depo. at 129.

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6. Mrs. Clinton's Work for Ward.

The May 1 billing entry raised the issue of whom Mrs. Clinton represented in that transaction. The option agreement was between Ward and Madison Guaranty, and Mrs. Clinton's billing entry showed she consulted only with Ward and Ward's personal accountant, Schaufele. Investigators questioned whether Mrs. Clinton had breached legal conflict rules by representing both sides of the option transaction. Mrs. Clinton denied representing Ward in his individual capacity. In her 1996 answers to the RTC interrogatories, Mrs. Clinton said:

> To the best of my recollection, I don't believe that I have performed legal services for Seth Ward individually, although I did confer with him on certain matters, as described more fully herein, when he was working for Madison Financial Corporation, a wholly owned subsidiary of Madison Guaranty Savings & Loan.[1955]

In her 1996 FDIC interview, Mrs. Clinton addressed the potential conflict of interest. She said:

> Q. The option is an agreement between Mr. Ward on the one hand and Madison Financial on the other, so there are two parties to it. Yet, the time records indicate you talked to Mr. Ward. They indicate you talked to Mr. Schaufele, who is Mr. Ward's accountant. They don't indicate you talking to anyone other than Mr. Ward associated with Madison. In a matter such as this, where you're drafting something, an agreement -- strike that. Let me put it this way. Your client was Madison, not Ward; right, and this is an agreement between Madison and Ward, yet so far as the billing records indicate, you talked only to Ward and to Ward's accountant. Do you think you would have talked to someone at Madison to ascertain whether this is what they wanted to do?
>
> A. Well, in most of my dealings in the last months preceding this on behalf of Madison, I dealt with Mr. Ward. He was the person I dealt with on the brewery issue. He was the person that we dealt with on the utility issue.

[1955] H. Clinton 1/20/96 RTC Interrog. Resp. at No. 32.

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He was Madison so far as I was concerned.

Q. You dealt virtually exclusively with him as opposed to Latham or McDougal?

A. In the late 1985, 1986 period, that's correct.

Q. What I'm getting at is, what distinguishes this in my mind from that representation, here you have at least the possibility -- feel free to disagree with me -- of a conflict and yet this is a transaction between Ward and Madison. It's not Ward simply acting as agent of Madison, but you didn't speak to anyone at Madison?

A. I may have. I don't recollect that, and the time records don't reflect that, but I can't tell you, sitting here today, I did not speak to anyone at Madison.[1956]

Mrs. Clinton was also asked whether she in fact represented Ward as an individual, and she responded: "I do not recall thinking anyone was the client other than Madison Guaranty."[1957]

Webb Hubbell, Ward's usual Rose attorney, testified he understood Mrs. Clinton was representing both Madison Guaranty and Seth Ward on the option:

Mr. Chertoff. Can you help us to understand why it was Mr. Ward would have gone to Mrs. Clinton to help him draft an option rather than to you?

Mr. Hubbell. She was representing Madison.

Mr. Chertoff. Who was representing Ward with respect to the option?

Mr. Hubbell. Mrs. Clinton.

Mr. Chertoff. So Mrs. Clinton was representing both Madison and Ward?

[1956] H. Clinton 2/14/96 FDIC Int. at 85-87.

[1957] Id. at 48-49.

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Mr. Hubbell. That's my understanding.[1958]

7. Analysis of Mrs. Clinton's Work on Castle Grande/IDC.

Substantial evidence supported the conclusion that Hillary Rodham Clinton did more than an insubstantial amount of legal work on the IDC matter for Madison Guaranty. Significant evidence also supported the conclusion that Mrs. Clinton's testimony about that work was incomplete and factually inaccurate. Nonetheless, insufficient evidence exists to prove beyond a reasonable doubt that Mrs. Clinton's inaccurate statements and testimony were knowingly false, and therefore given with the requisite criminal intent.

Lack of Memory -- This Office examined Mrs. Clinton's initial claim that she did not remember working on the IDC matter. This Office concluded that certain evidence contradicted Mrs. Clinton's claim.

The billing records showed that Mrs. Clinton did more work on the IDC matter than on any other Madison Guaranty matter. There is also evidence that Mrs. Clinton reviewed the billing records in 1992 showing this work. Her fingerprints were on a copy of the billing records produced in 1996,[1959] and she later agreed that if she touched them it was in 1992 rather than 1994 or 1995.[1960]

When Mrs. Clinton said in 1995 that she could not remember what IDC was because the work had been done 10 years previously, it had only been three years since she reviewed the

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[1958] Senate Whitewater Comm. Hearing, supra note 147, at 7 (Feb. 7, 1996) (testimony of W. Hubbell).

[1959] Federal Bureau of Investigation, Laboratory Report at 3 (Mar. 21, 1996).

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billing records recording that work. In 1994, when she told the FDIC investigators that she thought her name was on the IDC bill only as the billing partner, it had been two years since she had reviewed the billing records showing her work. Nevertheless, this circumstantial evidence was, in the Independent Counsel's judgment, insufficient to obtain and sustain a conviction.

The billing records provided significant documentary evidence about Mrs. Clinton's connection to Seth Ward. The records showed that at several times when Seth Ward was engaged in irregular activities, Mrs. Clinton was billing for legal services performed for Ward and Madison Guaranty. For example, on April 7, 1986, when Don Denton and Seth Ward were executing the cross notes to conceal Ward's compensation from the regulators examining Madison Guaranty, Mrs. Clinton billed Madison Guaranty on the same IDC matter for a telephone conference with Denton. Mrs. Clinton was also personally involved in preparing the May 1, 1986 option agreement used by Ward and Denton to deceive the federal examiners. On February 28, 1986, a day that numerous fraudulent transactions were conducted on the eve of the federal examination,[1961] Mrs. Clinton billed Madison Guaranty for three-quarters of an hour for "Seth Ward."[1962]

Mrs. Clinton had three motives to minimize her role in the IDC/Castle Grande transactions: First, there was the potential for political embarrassment because the press was closely scrutinizing the work she did for a corrupt thrift, some of which involved representing the

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[1960] H. Clinton 4/25/98 Depo. at 126.

[1961] Denton 8/20/96 GJ at 48-50.

[1962] Rose Law Firm Billing Records (Mar. 28, 1996) (Doc. No. DEK015022).

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thrift before state agencies regulated under her husband's authority as Governor. Second, there was the potential for legal action by the FDIC and RTC against Rose for negligently facilitating transactions that caused substantial losses to the institution. Third, there was the possibility of criminal liability resulting from frauds perpetrated by insiders and others associated with Madison Guaranty.

As set forth in Chapter 2 of this Part, many events had happened following Mrs. Clinton's termination of Madison as a client -- any of which, in this Office's judgment, could have refreshed her recollection. By 1990, for example, Mrs. Clinton must have known that John Latham had pleaded guilty to criminal fraud in a Castle Grande transaction, and Jim McDougal and Jim and David Henley had been indicted and acquitted on Castle Grande transactions.

Most significantly, in 1992, Mrs. Clinton's work for Madison Guaranty became a campaign issue. Mrs. Clinton, Webb Hubbell, and Vincent Foster focused significant attention on the matter at that time. Of particular significance is that Hubbell reviewed the billing records during the campaign and discussed with Mrs. Clinton her numerous conferences with Seth Ward.[1963] Mrs. Clinton's fingerprints were found on the billing records produced from the White House in 1996. Mrs. Clinton explained her fingerprints on the records by testifying that she may have looked at the records during the 1992 campaign, but not later when they had been subpoenaed.[1964]

Balanced against this circumstantial evidence, however, is Mrs. Clinton's denial of any

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[1963] Hubbell 12/19/95 GJ at 177-78.

[1964] H. Clinton 1/26/96 GJ at 28.

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recollection. As Mrs. Clinton frequently said, the length of time since her work for Madison Guaranty was substantial, almost 8 years. That passage of time could support a reasonable inference that Mrs. Clinton could not remember what work she had done. There is no direct evidence to contradict Mrs. Clinton's claimed lack of memory.

The circumstantial evidence about Mrs. Clinton's lack of memory was inconclusive and, therefore, insufficient to refute Mrs. Clinton's claimed lack of memory. Considering the totality of the evidence, it is the judgment of the Independent Counsel that Mrs. Clinton's statements and testimony that she did not remember working on the IDC/Castle Grande transaction could not be proven deliberately false beyond a reasonable doubt.

April 7, 1986 Phone Call With Denton -- This Office examined whether Mrs. Clinton played any role in the creation of the Ward "cross notes" or concealed that role from federal investigators.

It is indisputable that, on April 7, 1986, Mrs. Clinton had a telephone conversation with Don Denton of Madison Guaranty. Documentary evidence, in the form of a telephone message slip and Mrs. Clinton's billing records, provided contemporaneous corroboration that the telephone conversation occurred. It is equally indisputable that on April 7, 1986, Madison Guaranty and Ward executed two "cross notes" on Ward's "commissions" from the IDC/Castle Grande transaction. It is indisputable that Mrs. Clinton billed her telephone conference with Denton to the IDC matter in the Rose billing system. Significant evidence corroborated Denton's claim that he and Mrs. Clinton discussed the Ward cross notes during the April 7 conversation.

Mrs. Clinton's contrary explanation -- that their conversation was about Babcock and not

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the IDC matter -- is supported by less corroborative evidence. There is also a substantial basis to challenge Denton's recollection of the conversation. Denton offered a detailed recollection, but Denton was not an unbiased witness and his detailed recollection was not disclosed when he was first questioned on the subject. The delay in recounting this conversation leaves his credibility subject to challenge. And, of course, the only other participant in the conversation, Mrs. Clinton, denied Denton's version of events.

Thus, the testimony of a single witness whose credibility is subject to impeachment provided insufficient evidence to prove that Mrs. Clinton falsely denied that she had done work on the Ward cross notes.

May 1, 1986 Option -- This Office examined Mrs. Clinton's role in the drafting of the May 1, 1986 option agreement. It is indisputable that Mrs. Clinton played a role in drafting the option agreement -- she billed for doing so, and the option agreement bears her word processing code.

However, the evidence was equally clear in supporting Mrs. Clinton's statement that she did not draft the option agreement from scratch. As a litigator, Mrs. Clinton had little or no experience in real estate matters, and the option prepared by Mrs. Clinton erroneously described the property being optioned. Thus, Hubbell's suggestion that Mrs. Clinton may have used Rose's form files in an effort to be responsive to Seth Ward seemed plausible.

Given that the evidence supports the conclusion that Mrs. Clinton worked on the option matter for two hours as an apparent accommodation to Ward and/or Hubbell, no basis exists to contradict Mrs. Clinton's claim that, when she prepared the option, she did not know the use to

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which it would be put. In particular, there is no direct evidence that Mrs. Clinton knew the option would be used to deceive federal regulators. Though there is some circumstantial evidence to negate Mrs. Clinton's subsequent claim that she did not remember the option agreement, that evidence (as with other evidence of lack of recollection) is insufficient to sustain a prosecution.

Representing Seth Ward -- The RTC and FDIC examined whether Mrs. Clinton's work on the May 1, 1986 option agreement constituted a conflict of interest. This Office examined whether Mrs. Clinton may have tried to conceal such a conflict from those agencies or other federal investigators. On its face, the May 1, 1986 option agreement was a transaction between Ward and Madison Financial -- the subsidiary of Mrs. Clinton's client, Madison Guaranty. Though Schaufele testified he had no memory of speaking with Mrs. Clinton about the option, he noted that the only subject he thought that he could have discussed would have been the tax implications of the option for his client, Ward.[1965] Such a conversation would support the conclusion that Mrs. Clinton was working for Ward in his individual capacity when she drafted the option, and Hubbell stated that he understood that this was so and that he understood that Mrs. Clinton had represented both sides in the transaction.

Mrs. Clinton, however, denied that she represented Ward in his individual capacity. This denial is corroborated by the documenting record -- her work on the option was billed to Madison Guaranty, not Seth Ward, and Madison Guaranty paid the bill.

In sum, given insufficient evidence, this Office determined that no prosecution was

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appropriate for any of the statements made by Mrs. Clinton about her work on the IDC/Castle Grande transaction.

III. SUMMARY CONCLUSION

The foregoing Chapters have summarized the evidence about the interaction between Rose, Madison Guaranty Savings & Loan, Hillary Rodham Clinton, Jim McDougal, Webb Hubbell, and Seth Ward. The evidence, as already noted, establishes indisputably that Jim McDougal and other Madison Guaranty insiders engaged in criminally fraudulent conduct through the operation of the institution. The evidence also establishes that Mrs. Clinton's representation of Madison involved legal work that, ultimately, was used by McDougal and others to conceal unlawful activity.

In the end, however, the Independent Counsel concluded that there was no substantial evidence to support the conclusion that Mrs. Clinton was a knowing participant in the criminal conduct of McDougal or others. The Independent Counsel also concluded that there was insufficient evidence to prove that any of Mrs. Clinton's subsequent statements about her representation (including her statements to the effect that she did not remember the details of that representation) were knowingly false. Though in some instances her recollection proved to be factually inaccurate, the Independent Counsel ultimately determined that a trier of fact would not conclude, beyond a reasonable doubt, that Mrs. Clinton's recollection was knowingly false. For this reason, prosecution of Mrs. Clinton regarding these allegations was declined, and the matter is now closed.

[1965] Schaufele 1/30/96 GJ at 29.

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PART A

APPENDIX 1

WHITEWATER LOT SALES 1980-1991

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WHITEWATER LOT SALES 1980-1991

The chart below lists all lots sold by Whitewater Development between 1980 and 1991 as reconstructed by professional investigators detailed to this office. Lot numbers appearing more than once reflect defaults that resulted in the transfer of the lots back to Whitewater Development for resale. Profits are indicated by normal text, while losses are indicated by parentheses.

DATE	LOT(S)	SALE PRICE	COST OF LAND	PROFIT/LOSS
1/25/80	14 & 15	$12,500.00	$9,028.49	$3,471.51
2/7/80	20 & 33	$23,000.00	$14,119.91	$8,880.10
2/20/80	32	$25,000.00	$11,770.02	$13,229.98
10/1/80	39	$11,000.00	$5,019.27	$5,980.73
10/14/80	7	$33,250.00	$28,559.31	$4,690.69
10/15/80	28	$14,000.00	$2,597.24	$11,402.76
11/1/80	36	$11,500.00	$5,318.15	$6,181.85
1/7/81	35	$12,500.00	$5,957.16	$6,542.84
2/2/81	17	$6,900.00	$5,184.17	$1,715.83
2/19/81	31	$14,000.00	$1,226.47	$12,773.53
3/16/81	42	$8,500.00	$4,771.91	$3,728.09
3/16/81	8	$6,000.00	$5,194.48	$805.52
4/27/81	19 & 21	$13,500.00	$9,389.22	$4,110.78
5/20/81	41	$11,500.00	$5,215.09	$6,284.91
5/23/81	34	$10,500.00	$5,503.67	$4,996.33
6/26/81	40ac	$10,000.00	$9,022.98	$997.02
7/16/81	38	$10,500.00	$4,947.12	$5,552.88
8/26/81	40	$7,875.00	$5,019.27	$2,855.73
10/9/81	37	$11,500.00	$4,926.51	$6,573.49

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DATE	LOT(S)	SALE PRICE	COST OF LAND	PROFIT/LOSS
12/9/81	13	$27,500.00	$33,815.82	$(6,315.82)
12/9/81	25 & 26	$27,500.00	$6,482.79	$21,017.21
3/5/82	18	$7,000.00	$5,503.67	$1,496.33
7/15/82	33	$14,000.00	$6,668.31	$7,331.69
6/28/83	1	$7,000.00	$4,565.78	$2,434.22
4/24/84	40ac	$7,000.00	$9,022.98	$(2,022.98)
8/27/84	27	$14,000.00	$2,679.69	$11,320.31
1/7/85	33	$12,000.00	$6,668.31	$5,331.69
2/21/85	18	$7,000.00	$5,503.67	$1,496.33
5/30/85	2	$2,433.04	$4,462.71	$(2,029.67)
5/30/85	3	$2,798.28	$5,132.64	$(2,334.36)
5/30/85	4	$2,820.76	$5,173.86	$(2,353.10)
5/30/85	5	$2,899.42	$5,318.15	$(2,418.73)
5/30/85	6	$3,017.42	$5,534.59	$(2,517.17)
5/30/85	9	$3,034.28	$5,565.51	$(2,531.23)
5/30/85	10	$1,989.14	$3,648.50	$(1,659.36)
5/30/85	11	$1,629.52	$2,988.89	$(1,359.37)
5/30/85	12	$1,635.14	$2,999.19	$(1,364.05)
5/30/85	14	$2,056.57	$3,772.18	$(1,715.61)
5/30/85	15	$2,865.71	$5,256.32	$(2,390.61)
5/30/85	16	$2,882.57	$5,287.23	$(2,404.66)
5/30/85	17	$2,826.38	$5,184.17	$(2,357.79)
5/30/85	18	$3,000.57	$5,503.67	$(2,503.10)
5/30/85	20	$4,062.56	$7,451.60	$(3,389.04)
5/30/85	22	$2,410.57	$4,421.49	$(2,010.92)
5/30/85	23	$1,725.05	$3,164.10	$(1,439.05)
5/30/85	24	$1,696.95	$3,112.56	$(1,415.61)

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DATE	LOT(S)	SALE PRICE	COST OF LAND	PROFIT/LOSS
5/30/85	29	$955.24	$1,752.11	$(796.87)
5/30/85	30	$578.77	$1,061.57	$(482.80)
5/30/85	35	$3,247.80	$5,957.16	$(2,709.36)
5/30/85	37	$2,685.90	$4,926.51	$(2,240.61)
5/30/85	43	$3,219.71	$5,905.62	$(2,685.91)
5/30/85	44	$3,528.65	$6,472.48	$(2,943.83)
4/29/87	26	$13,500.00	$2,999.19	$10,500.81
4/29/87	25	$13,500.00	$3,483.60	$10,016.40
8/17/89	26	$14,000.00	$2,999.19	$11,000.81
8/24/89	25	$11,500.00	$3,483.60	$8,016.40
3/15/90	27	$16,500.00	$2,679.69	$13,820.31
2/10/91	31	$13,500.00	$1,226.47	$12,273.53
5/6/91	27	$6,500.00	$2,679.69	$3,820.31

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PART A

APPENDIX 2

RECONSTRUCTED REPAYMENT SCHEDULES FOR LOANS MADE TO OR WHICH CONFERRED A BENEFIT ON THE WHITEWATER PARTNERSHIP OR CORPORATION

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I. UNION NATIONAL LOAN NO. 4197 MADE TO WILLIAM J. CLINTON AND JAMES B. McDOUGAL (JUNE 19, 1978).

DATE	PAYMENT ON PRINCIPAL	PAYMENT ON INTEREST	TOTAL PAYMENT	PRINCIPAL BALANCE	SOURCE OF PAYMENT
6/19/78				$20,000.00	
1/2/79	$0.00	$1,000.00	$1,000.00	$20,000.00	Great Southern[1]
6/19/79	$0.00	$999.99	$999.99	$20,000.00	Great Southern
9/17/79	$0.00	$517.81	$517.81	$20,000.00	Great Southern
12/17/79	$0.00	$573.42	$573.42	$20,000.00	James B. McDougal
6/23/80	$20,000.00	$1,346.29	$21,346.29	$0.00	Whitewater Development

II. CITIZENS BANK LOAN NO. 5885 MADE TO WILLIAM J. CLINTON, HILLARY RODHAM, JAMES B. McDOUGAL AND SUSAN McDOUGAL (AUGUST 2, 1978).

DATE	PAYMENT ON PRINCIPAL	PAYMENT ON INTEREST	TOTAL PAYMENT	PRINCIPAL BALANCE	SOURCE OF PAYMENT
8/2/78				$182,611.20	
11/5/78	$0.00	$4,752.88	$4,752.88	$182,611.20	Great Southern[2]
1/24/79	$0.00	$4,377.68	$4,377.68	$182,611.20	James B. McDougal[3]
2/5/79	$0.00	$225.13	$225.13	$182,611.20	Great Southern
5/8/79	$0.00	$4,452.70	$4,452.70	$182,611.20	Great Southern
8/5/79	$0.00	$4,577.78	$4,577.78	$182,611.20	James B. or Susan H. McDougal
11/5/79	$0.00	$4,599.64	$4,599.64	$182,611.20	Bill Clinton or Hillary Rodham
12/29/79	$0.00	$4,752.88	$4,752.88	$182,611.20	Bill Clinton or Hillary Rodham
5/5/80	$0.00	$4,352.63	$4,352.63	$182,611.20	Whitewater Development
8/5/80	$0.00	$4,593.13	$4,593.13	$182,611.20	James B. or Susan H. McDougal
9/5/80	$9,000.00	$0.00	$9,000.00	$173,611.20	Bill Clinton or Hillary Rodham
10/20/80	$15,185.00	$0.00	$15,185.00	$158,426.20	Chris Wade (Lot

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DATE	PAYMENT ON PRINCIPAL	PAYMENT ON INTEREST	TOTAL PAYMENT	PRINCIPAL BALANCE	SOURCE OF PAYMENT
					7)
10/21/80	$15,185.00	$0.00	$15,185.00	$143,241.20	Chris Wade (Lot 7)
11/5/80	$0.00	$4,755.73	$4,755.73	$143,241.20	Whitewater Development
2/4/81	$0.00	$3,928.34	$3,928.34	$143,241.20	Whitewater Development
3/17/81	$5,950.00	$0.00	$5,950.00	$137,291.20	Lot Sale
8/27/81	$8,050.00	$7,852.11	$15,902.11	$129,241.20	Whitewater Development
11/30/82	$0.00	$20,000.00	$20,000.00	$129,241.20	Citizens Bank Loan #10295
11/30/82	$0.00	$10,476.16	$10,476.16	$129,241.20	Whitewater Development
2/28/83	$0.00	$3,734.00	$3,734.00	$129,241.20	Whitewater Development
3/25/83	$0.00	$2,000.00	$2,000.00	$129,241.20	Whitewater Development
4/1/83	$0.00	$2,000.00	$2,000.00	$129,241.20	Whitewater Development
4/11/83	$0.00	$951.67	$951.67	$129,241.20	Whitewater Development
5/25/83	$0.00	$1,400.00	$1,400.00	$129,241.20	Whitewater Development
7/20/83	$1,165.76	$3,734.24	$4,900.00	$128,075.44	Lot Sale
10/14/83	$0.00	$4,375.68	$4,375.68	$128,075.44	Whitewater Development[4]
5/3/84	$2,902.15	$9,568.76	$12,470.91	$125,173.29	Whitewater Development
9/28/84	$748.63	$6,851.95	$7,600.58	$124,424.66	Whitewater Development
11/1/84	$17,535.32[5]	$1,564.68	$19,100.00	$106,889.34	Whitewater Development
11/26/84	$1,756.27	$0.00	$1,756.27	$105,133.07	Whitewater Development
11/26/84	$5,011.64	$988.36	$6,000.00	$100,121.43	Whitewater Development
1/22/85	$193.00	$2,110.78	$2,303.78	$99,928.43	Whitewater Development
2/6/85	$1,749.38	$554.40	$2,303.78	$98,179.05	Whitewater Development

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DATE	PAYMENT ON PRINCIPAL	PAYMENT ON INTEREST	TOTAL PAYMENT	PRINCIPAL BALANCE	SOURCE OF PAYMENT
3/5/85	$1,323.33	$980.45	$2,303.78	$96,855.72	Whitewater Development
4/3/85	$1,264.90	$1,038.88	$2,303.78	$95,590.82	Whitewater Development
5/23/85	$536.00	$1,767.78	$2,303.78	$95,054.82	Whitewater Development
7/5/85	$792.02	$1,511.76	$2,303.78	$94,262.80	Whitewater Development
7/17/85	$1,885.41	$418.37	$2,303.78	$92,377.39	Whitewater Development
7/23/85	$9,500.00	$0.00	$9,500.00	$82,877.39	Chris Wade/ Ozark Air
9/6/85	$719.38	$1,584.40	$2,303.78	$82,158.01	Whitewater Development
10/18/85	$2,049.47	$1,276.26	$3,325.73	$80,108.54	Whitewater Development
11/22/85	$244.81	$1,037.02	$1,281.83	$79,863.73	Whitewater Development
11/22/85	$2,303.78	$0.00	$2,303.78	$77,559.95	Whitewater Development
12/3/85	$1,988.23	$315.55	$2,303.78	$75,571.72	Whitewater Development
1/3/86	$1,437.29	$866.49	$2,303.78	$74,134.43	Whitewater Development
2/18/86	$1,042.48	$1,261.30	$2,303.78	$73,091.95	Whitewater Development
3/24/86	$1,384.62	$919.16	$2,303.78	$71,707.33	Whitewater Development
4/16/86	$5,890.00	$610.00	$6,500.00	$65,817.33	Chris Wade/ Ozark Air
4/16/86	$0.00	-$610.00	-$610.00	$65,817.33	[ERROR in 4/16/86 Payment]
4/16/86	$610.00	$0.00	$610.00	$65,207.33	[ERROR in 4/16/86 Payment]
5/1/86	$1,332.01	$971.77	$2,303.78	$63,875.33	Whitewater Development
6/4/86	$1,500.53	$803.25	$2,303.78	$62,374.79	Whitewater Development
6/23/86	$1,865.45	$438.33	$2,303.78	$60,509.34	Whitewater Development
9/5/86	$647.65	$1,656.13	$2,303.78	$59,861.69	Whitewater Development

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DATE	PAYMENT ON PRINCIPAL	PAYMENT ON INTEREST	TOTAL PAYMENT	PRINCIPAL BALANCE	SOURCE OF PAYMENT
10/27/86	$1,152.47	$1,151.31	$2,303.78	$58,709.22	Whitewater Development
11/6/86	$2,086.64	$217.14	$2,303.78	$56,622.58	Whitewater Development
12/23/86	$1,803.34	$984.30	$2,787.64	$54,819.24	Whitewater Development
12/31/86	$1,657.72	$162.20	$1,819.92	$53,161.52	Flowerwood Farms & Rolling Manor
3/6/87	$1,025.72	$1,278.06	$2,303.78	$52,135.80	Whitewater Development
3/26/87	$0.00	$385.66	$385.66	$52,135.80	Whitewater Development
5/6/87	$528.08	$614.92	$1,143.00	$51,607.72	Whitewater Development
6/3/87	$727.31	$415.69	$1,143.00	$50,880.41	Whitewater Development
7/3/87	$703.98	$439.10	$1,143.00	$50,176.51	Whitewater Development
7/8/87	$177.83	$72.17	$250.00	$49,998.68	Ozark Air
8/3/87	$769.04	$373.96	$1,143.00	$49,229.64	Whitewater Development
9/3/87	$703.90	$439.02	$1,142.92	$48,525.66	Whitewater Development
10/5/87	$696.30	$446.70	$1,143.00	$47,829.36	Whitewater Development
11/3/87	$743.99	$399.01	$1,143.00	$47,085.37	Whitewater Development
12/3/87	$736.65	$406.35	$1,143.00	$46,348.72	Whitewater Development
1/4/88	$716.34	$426.66	$1,143.00	$45,632.38	Whitewater Development
2/3/88	$749.19	$393.81	$1,143.00	$44,883.19	Whitewater Development
3/3/88	$768.56	$374.44	$1,143.00	$44,114.63	Whitewater Development
4/4/88	$736.90	$406.10	$1,143.00	$43,377.73	Whitewater Development
4/5/88	$2,500.00	$0.00	$2,500.00	$40,877.73	Chris Wade/ Ozark Air
6/7/88	$2,675.68	$753.32	$3,429.00	$38,202.05	Whitewater Development

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DATE	PAYMENT ON PRINCIPAL	PAYMENT ON INTEREST	TOTAL PAYMENT	PRINCIPAL BALANCE	SOURCE OF PAYMENT
7/15/88	$1,868.39	$417.61	$2,286.00	$36,333.66	Whitewater Development
9/3/88	$595.51	$547.49	$1,143.00	$35,738.15	Whitewater Development
10/3/88	$819.89	$323.11	$1,143.00	$34,918.26	Whitewater Development
11/3/88	$816.78	$326.22	$1,143.00	$34,101.48	Whitewater Development
12/5/88	$814.13	$328.87	$1,143.00	$33,287.35	Whitewater Development
1/3/89	$852.08	$290.92	$1,143.00	$32,435.27	Whitewater Development
2/3/89	$839.97	$303.03	$1,143.00	$31,595.30	Whitewater Development
3/389	$876.39	$266.61	$1,143.00	$30,718.91	Whitewater Development
4/3/89	$856.01	$286.99	$1,143.00	$29,862.90	Whitewater Development
5/3/89	$873.01	$269.99	$1,143.00	$28,989.89	Whitewater Development
6/5/89	$854.69	$288.31	$1,143.00	$28,135.20	Whitewater Development
7/6/89	$880.15	$262.85	$1,143.00	$27,255.05	Whitewater Development
8/8/89	$871.94	$271.06	$1,143.00	$26,383.11	Whitewater Development
9/7/89	$904.47	$238.53	$1,143.00	$25,478.64	Whitewater Development
10/23/89	$1,626.79	$353.21	$1,980.00	$23,851.85	Chris Wade/ Ozark Air
11/3/89	$1,063.93	$79.07	$1,143.00	$22,787.92	Whitewater Development
12/4/89	$930.10	$212.90	$1,143.00	$21,857.82	Whitewater Development
1/3/90	$945.38	$197.62	$1,143.00	$20,912.44	Whitewater Development
2/5/90	$935.02	$207.98	$1,143.00	$19,977.42	Whitewater Development
3/5/90	$974.42	$168.58	$1,143.00	$19,003.00	Whitewater Development
4/3/90	$976.92	$166.08	$1,143.00	$18,026.08	Whitewater Development

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DATE	PAYMENT ON PRINCIPAL	PAYMENT ON INTEREST	TOTAL PAYMENT	PRINCIPAL BALANCE	SOURCE OF PAYMENT
5/3/90	$980.02	$162.98	$1,143.00	$17,046.06	Whitewater Development
6/11/90	$942.65	$200.35	$1,143.00	$16,103.41	Whitewater Development
7/5/90	$1,026.53	$116.47	$1,143.00	$15,076.88	Whitewater Development
7/6/90	$1,495.46	$4.54	$1,500.00	$13,581.42	Chris Wade/ Ozark Air
10/9/90	$0.00	$98.00	$98.00	$13,581.42	Lot Payment
10/31/90	$613.12	$380.88	$994.00	$12,968.30	Whitewater Development
10/31/90	($613.12)	($380.88)	($994.00)	$13,581.42	Loan Chargeback
11/16/90	$0.00	$254.00	$254.00	$13,581.42	Chris Wade/ Ozark Air
4/17/91	$179.49	$814.51	$994.00	$13,401.93	Whitewater Development
8/2/91	$0.00	$504.86	$504.86	$13,401.93	Whitewater Development
9/6/91	$363.34	$68.66	$432.00	$13,038.59	Escrow Payment
9/12/91	$222.42	$23.58	$246.00	$12,816.17	Escrow Payment
10/21/91	$281.37	$150.63	$432.00	$12,534.80	Escrow Payment
10/31/91	$208.22	$37.78	$246.00	$12,326.58	Escrow Payment
11/12/91	$387.42	$44.58	$432.00	$11,939.16	Escrow Payment
11/13/91	$242.20	$3.60	$245.80	$11,696.76	Escrow Payment
12/3/91	$175.50	$70.50	$246.00	$11,521.26	Escrow Payment
12/24/91	$223.08	$72.92	$296.00	$11,298.18	Escrow Payment
12/24/91	$136.00	$0.00	$136.00	$11,162.18	Escrow Payment
1/24/92	$141.72	$104.28	$246.00	$11,020.46	Escrow Payment
2/6/92	$388.82	$43.18	$432.00	$10,631.64	Escrow Payment
2/7/92	$242.80	$3.20	$246.00	$10,388.84	Escrow Payment
3/25/92	$98.85	$147.15	$246.00	$10,289.99	Escrow Payment
3/31/92	$413.39	$18.61	$432.00	$9,876.60	Escrow Payment
4/28/92	$162.66	$83.34	$246.00	$9,713.94	Escrow Payment

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DATE	PAYMENT ON PRINCIPAL	PAYMENT ON INTEREST	TOTAL PAYMENT	PRINCIPAL BALANCE	SOURCE OF PAYMENT
5/8/92	$216.72	$29.28	$246.00	$9,497.22	Escrow Payment
5/12/92	$9,497.22	$11.45	$9,508.67	$0.00	Chris Wade/ Ozark Air

The following schedule reflects the extension and modification agreements that the Clintons and the McDougals entered into in order to pay back Citizens Bank loan #5885:

DATE	PRINCIPAL BALANCE
11/9/79	$182,611.20[6]
8/5/80	$182,611.20[7]
8/5/81	$129,241.20[8]
11/1/82	$129,241.20[9]
10/14/83	$120,075.44[10]
11/26/84	$100,121.43[11]
3/26/87	$52,135.80[12]
4/4/88	$40,877.73[13]
7/15/88	$36,333.66[14]

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III. BANK OF CHERRY VALLEY LOAN NO. 25997 MADE TO JAMES B. McDOUGAL (JUNE 19, 1980) AND SUCCESSOR LOANS.

A. Bank of Cherry Valley Loan No. 25997.

DATE	PAYMENT ON PRINCIPAL	PAYMENT ON INTEREST	TOTAL PAYMENT	PRINCIPAL BALANCE	SOURCE OF PAYMENT
6/19/80				$20,000.00	
12/24/80	$0.00	$1,300.00	$1,300.00	$20,000.00	Whitewater Development
4/13/81	$469.44	$830.56	$1,300.00	$19,530.56	Whitewater Development
5/11/81	$1,300.00	$0.00	$1,300.00	$18,230.56	Whitewater Development
4/13/81	$18,230.56	$0.00	$18,230.56	$0.00	Renewed with: Bank of Cherry Valley Loan #26731

B. Bank of Cherry Valley Loan No. 26731 (April 13, 1981).

DATE	PAYMENT ON PRINCIPAL	PAYMENT ON INTEREST	TOTAL PAYMENT	PRINCIPAL BALANCE	SOURCE OF PAYMENT
4/13/81				$18,230.56	
6/4/81	$1,300.00	$0.00	$1,300.00	$16,930.56	Whitewater Development
10/13/81	$0.00	$1,507.93	$1,507.93	$16,930.56	Whitewater Development
7/6/82	$0.00	$1,455.09	$1,455.09	$16,930.56	Whitewater Development
4/13/82	$16,930.56	$0.00	$16,930.56	$0.00	Renewed with: Bank of Cherry Valley Loan #27572

C. Bank of Cherry Valley Loan No. 27572 (April 13, 1982).

DATE	PAYMENT ON PRINCIPAL	PAYMENT ON INTEREST	TOTAL PAYMENT	PRINCIPAL BALANCE	SOURCE OF PAYMENT
4/13/82				$16,930.56	
7/12/82	$258.14	$0.00	$258.14	$16,672.42	James B.

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DATE	PAYMENT ON PRINCIPAL	PAYMENT ON INTEREST	TOTAL PAYMENT	PRINCIPAL BALANCE	SOURCE OF PAYMENT
					McDougal
8/9/82	$258.14	$0.00	$258.14	$16,414.28	James B. McDougal
8/11/82	$258.14	$0.00	$258.14	$16,156.14	James B. McDougal
12/27/82	$0.00	$1,845.37	$1,845.37	$16,156.14	Whitewater Development
8/12/82	$16,156.14	$0.00	$16,156.14	$0.00	Renewed with: Bank of Cherry Valley Loan #27851

D. Bank of Cherry Valley Loan No. 27851 (December 9, 1982).

DATE	PAYMENT ON PRINCIPAL	PAYMENT ON INTEREST	TOTAL PAYMENT	PRINCIPAL BALANCE	SOURCE OF PAYMENT
12/9/82				$16,156.14	
6/28/83	$1,156.14	$1,127.83	$2,283.97	$15,000.00	Whitewater Development
7/7/83	$15,000.00	$169.51	$15,169.51	$0.00	Renewed with: Bank of Cherry Valley Loan #28262

E. Bank of Cherry Valley Loan No. 28262 (June 9, 1983).

DATE	PAYMENT ON PRINCIPAL	PAYMENT ON INTEREST	TOTAL PAYMENT	PRINCIPAL BALANCE	SOURCE OF PAYMENT
6/9/83				$15,000.00	
12/22/83	$0.00	$1,015.27	$1,015.27	$15,000.00	Unknown
6/11/84	$0.00	$1,013.24	$1,013.24	$15,000.00	Whitewater Development
6/20/84	$15,000.00	$0.00	$15,000.00	$0.00	Renewed with: Bank of Cherry Valley Loan #28861

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F. Bank of Cherry Valley Loan No. 28861 (June 9, 1984).

DATE	PAYMENT ON PRINCIPAL	PAYMENT ON INTEREST	TOTAL PAYMENT	PRINCIPAL BALANCE	SOURCE OF PAYMENT
6/9/84				$15,000.00	
9/4/84	$6,999.46	$500.54	$7,500.00	$8,000.54	Whitewater Development
9/12/84	$8,000.54	$0.00	$8,000.54	$0.00	Renewed with: Bank of Cherry Valley Loan #28997

G. Bank of Cherry Valley Loan No. 28997 (September 4, 1984).

DATE	PAYMENT ON PRINCIPAL	PAYMENT ON INTEREST	TOTAL PAYMENT	PRINCIPAL BALANCE	SOURCE OF PAYMENT
9/4/84				$8,000.54	
12/6/84	$2,990.79	$285.39	$3,276.18	$5,009.75	Whitewater Development
1/9/85	$5,009.75	$61.84	$5,071.59	$0.00	Whitewater Development

IV. BANK OF KINGSTON/MADISON BANK & TRUST LOAN NO. 23039 MADE TO HILLARY RODHAM (DECEMBER 16, 1980).

DATE	PAYMENT ON PRINCIPAL	PAYMENT ON INTEREST	TOTAL PAYMENT	PRINCIPAL BALANCE	SOURCE OF PAYMENT
12/16/80				$30,000.00	
1/8/82	$0.00	$6,361.65	$6,361.65	$30,000.00	Whitewater Development Bank of Kingston Account #0001-040-5
1/26/82	$0.00	$285.13	$285.13	$30,000.00	Hilman Logan
3/13/82	$0.00	$285.13	$285.13	$30,000.00	Hilman Logan
3/24/82	$2,000.00	$662.62	$2,662.62	$28,000.00	Whitewater Development Bank of Kingston Account

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DATE	PAYMENT ON PRINCIPAL	PAYMENT ON INTEREST	TOTAL PAYMENT	PRINCIPAL BALANCE	SOURCE OF PAYMENT
					#0001-040-5
4/12/82	$0.00	$285.13	$285.13	$28,000.00	Hilman Logan
5/18/82	$0.00	$285.13	$285.13	$28,000.00	Hilman Logan
5/31/82	$0.00	$285.13	$285.13	$28,000.00	Hilman Logan
7/9/82	$0.00	$285.13	$285.13	$28,000.00	Hilman Logan
8/10/82	$0.00	$285.13	$285.13	$28,000.00	Hilman Logan
9/7/82	$0.00	$413.68	$413.68	$28,000.00	Hilman Logan
9/7/82	$0.00	$413.68	$413.68	$28,000.00	Unknown
10/7/82	$0.00	$285.13	$285.13	$28,000.00	Hilman Logan
11/5/82	$0.00	$285.13	$285.13	$28,000.00	Hilman Logan
12/10/82	$0.00	$285.13	$285.13	$28,000.00	Hilman Logan
1/12/83	$0.00	$285.13	$285.13	$28,000.00	Hilman Logan
2/17/83	$0.00	$285.13	$285.13	$28,000.00	Hilman Logan
3/14/83	$0.00	$285.13	$285.13	$28,000.00	Hilman Logan
3/29/83	$1,000.00	$729.62	$1,729.62	$27,000.00	James B. McDougal ($700); Unknown ($1,029.62)
4/8/83	$207.52	$77.61	$285.13	$26,792.48	Hilman Logan
5/14/83	$0.00	$285.13	$285.13	$26,792.48	Hilman Logan
6/13/83	$0.00	$285.13	$285.13	$26,792.48	Hilman Logan
7/7/83	$0.00	$285.13	$285.13	$26,792.48	Hilman Logan
8/6/83	$0.00	$285.13	$285.13	$26,792.48	Hilman Logan
9/14/83	$0.00	$285.13	$285.13	$26,792.48	Hilman Logan
10/3/83	$20,740.54	$59.46	$20,800.00	$6,051.94	Security Bank Loan #957-585
10/13/83	$255.07	$30.06	$285.13	$5,796.87	Hilman Logan
10/14/83	$5,796.87	$4.78	$5,801.65	$0.00	Bill Henley Commission

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V. MADISON BANK AND TRUST LOAN NO. 23337-01 MADE TO WHITEWATER DEVELOPMENT (AUGUST 14, 1981).

DATE	PAYMENT ON PRINCIPAL	PAYMENT ON INTEREST	TOTAL PAYMENT	PRINCIPAL BALANCE	SOURCE OF PAYMENT
8/14/81				$30,000.00	
11/12/81	$3,000.00	$1,553.40	$4,553.40	$27,000.00	Whitewater Development
6/1/82	$1,444.98	$2,515.07	$3,960.05	$25,555.02	Whitewater Development
11/18/82	$25,555.02	$2,044.98	$27,600.00	$0.00	Not Stated[15]

VI. SECURITY BANK LOAN NO. 957-585 MADE TO BILL CLINTON (SEPTEMBER 30, 1982) AND SUCCESSOR.

A. Security Bank Loan No. 957-585 (September 30, 1982).

DATE	PAYMENT ON PRINCIPAL	PAYMENT ON INTEREST	TOTAL PAYMENT	PRINCIPAL BALANCE	SOURCE OF PAYMENT
9/30/83				$20,800.00	
10/9/84	$2,000.00	$2,811.19	$4,811.19	$18,800.00	Whitewater Development Madison Guaranty Account #2-301-515[16]
11/12/85	$5,000.00	$2,322.42	$7,322.42	$13,800.00	Whitewater Development Madison Guaranty Account #2-301-515[17]
1/2/87	$0.00	$1,635.51	$1,635.51	$13,800.00	Bill and Hillary Clinton
3/11/87	$0.00	$285.13	$285.13	$13,800.00	Hilman Logan
3/19/87	$210.32	$74.81	$285.13	$13,589.68	Hilman Logan
3/26/87	$13,589.68	$20.85	$13,610.53	$0.00	Security Bank Loan #838-608

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B. Security Bank Loan No. 838-608 (March 26, 1987).

DATE	PAYMENT ON PRINCIPAL	PAYMENT ON INTEREST	TOTAL PAYMENT	PRINCIPAL BALANCE	SOURCE OF PAYMENT
3/26/87				$14,117.59	
3/27/87	$507.06	$0.00	$507.06	$13,610.53	Unknown
4/13/87	$224.60	$60.53	$285.13	$13,385.93	Hilman Logan
5/6/87	$209.22	$75.91	$285.13	$13,176.71	Hilman Logan
6/5/87	$187.66	$97.47	$285.13	$12,989.05	Hilman Logan
7/17/87	$150.61	$134.52	$285.13	$12,838.44	Hilman Logan
8/25/87	$161.67	$123.46	$285.13	$12,676.77	Hilman Logan
9/11/87	$231.99	$53.14	$285.13	$12,444.78	Hilman Logan
4/12/88	$0.00	$655.03	$655.03	$12,444.78	Bill and Hillary Clinton
12/29/88	$12,444.78	$808.57	$13,253.35	$0.00	Bill and Hillary Clinton

VII. CITIZENS BANK LOAN #10295 MADE TO WHITEWATER DEVELOPMENT (NOVEMBER 1, 1982).

DATE	PAYMENT ON PRINCIPAL	PAYMENT ON INTEREST	TOTAL PAYMENT	PRINCIPAL BALANCE	SOURCE OF PAYMENT
11/1/82				$20,000.00	
12/21/82	$138.91	$160.09	$299.00	$19,861.09	Lot Payments
2/23/83	$125.40	$173.60	$299.00	$19,735.69	Lot Payments
5/4/83	$0.00	$1,117.35	$1,117.35	$19,735.69	Whitewater Development
7/20/83	$141.86	$592.88	$734.74	$19,593.83	Chris Wade
10/19/83	$19,593.83	$666.72	$20,260.55	$0.00	Whitewater Development

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VIII. MADISON GUARANTY SAVINGS & LOAN CIIECK # 924 MADE PAYABLE TO "BILL CLINTON" (NOVEMBER 15, 1982).

DATE	PAYMENT ON PRINCIPAL	PAYMENT ON INTEREST	TOTAL PAYMENT	PRINCIPAL BALANCE	SOURCE OF PAYMENT
11/15/82				$27,600.00	
7/15/83	$25,000.00	$0.00	$25,000.00	$2,600.00	Chris Wade Check #298[18]
8/1/83	$2,600.00	$2,481.82	$5,081.82	$0.00	James B. McDougal Trustee Check #105[19]

IX. CAPITAL MANAGEMENT SERVICES LOAN MADE TO SUSAN McDOUGAL D/B/A MASTER MARKETING (APRIL 3, 1986).

No payments were ever made towards satisfaction of the CMS loan to Susan McDougal d/b/a Master Marketing. The McDougals used $25,000 of the CMS loan proceeds to purchase the Lorance Heights parcel in Whitewater Development's name from International Paper in 1986. An additional $111,524.21 was used to payoff the $135,000 Flowerwood Farms loan taken out at Stephens Security Bank on April 3, 1985; $24,455.90 from the Flowerwood Farms Stephens Security Bank loan was used on April 9, 1985 to cover an overdraft in Whitewater Development's Madison Guaranty account.

X. INTERNATIONAL PAPER REAL ESTATE NOTE AND MORTGAGE SIGNED BY JIM McDOUGAL AND SUSAN McDOUGAL ON BEHALF OF WHITEWATER DEVELOPMENT (OCTOBER 10, 1986).

Jim McDougal (as President) and Susan McDougal (as Secretary) signed a Real Estate Note and a Mortgage with International Paper on behalf of Whitewater Development on October 10, 1986. Under the terms of the documents, the Whitewater corporation promised to pay International Paper the principal sum of $440,760.00, plus interest at a rate of 10.5% per annum. As discussed infra in the text of Volume II, Part A, Whitewater Development, through McDougal as President, transferred the title of Lorance Heights to Great Southern, another entity controlled by McDougal, on December 1, 1986. The deed was recorded December 15, 1986.

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[1] This payment was originally made by Great Southern but was later reimbursed by Attorney General and Mrs. Clinton, Union National account number 20-034-711, check no. 697 in the amount of $10,130.58, dated December 28, 1978. See Check No. 697 from the account of Bill Clinton and Hillary Rodham payable to Great Southern Land Company Inc. for $10,130.58 noting, "Reimbursement of Six Month's interest" (Dec. 12, 1978) (Doc. No. DEK006616).

[2] Great Southern made this payment but Attorney General Clinton and Mrs. Clinton, reimbursed the McDougal real estate company in the amount of $10,130.58, on December 28, 1978. See id.

[3] Great Southern made this payment but Attorney General Clinton and Mrs. Clinton, reimbursed the McDougal real estate company in the amount of $10,130.58, on December 28, 1978. See id.

[4] The source of the payment was a $17,000.00 Madison Financial Bonus to Jim McDougal. See Madison Guaranty Deposit Ticket for Whitewater Development for $17,000.00 noting, "check #279 $17,000" (Oct. 19, 1983) (Doc. No. 501563).

[5] At the time, Whitewater Development had a balance of $292.00 in its checking account. The corporation obtained money to make payment from Flowerwood Farms and Madison Marketing. This created an overdraft of $5,886.35 in Whitewater Development's checking account; the overdraft was remedied on December 7, 1984 by payment into Whitewater Development's account of $7,100 from Pembrook Manor. See Check No. 120 from the account of Pembrook Manor signed by James B. McDougal payable to Whitewater Development for $7,100.00 (Dec. 6, 1984) (Doc. No. GS-00007607); see Check No. 159 from the account of Tucker-Smith-McDougal signed by James B. McDougal payable to Whitewater Development for $1,600.00 noted, "loan" (Dec. 6, 1984) (Doc. No. GS-00007605); see Check No. 198 from the account of Rolling Manor signed by James B. McDougal payable to Whitewater Development for $330.00 (Dec. 6, 1984) (Doc. No. GS-00007605); see Check No. 114 from the account of "Jim McDougal, Trustee" payable to Whitewater Development for $280.00 (Dec. 6, 1984) (Doc. No. GS-00007605); see also Pillsbury Madison Preliminary Report at 78-80.

[6] See Extension Agreement (Nov. 9, 1979) (Doc. No. 70-00000028).

[7] See Extension and Modification Agreement (Aug. 5, 1980) (Doc. No. DEK002853).

[8] See Extension and Modification Agreement (Aug. 5, 1981) (Doc. No. 70-00000047). In his book Arkansas Mischief, McDougal wrote that he entered into this agreement without calling on the Clintons for further payment. Whitewater Development had sold one prime lot, which enabled the company to meet its payments in 1981. Jim McDougal & Curtis Wilkie, Arkansas Mischief, 195 (1998).

[9] See Extension and Modification Agreement (Nov. 1, 1982) (Doc. No. 70-0000067).

[10] See Extension and Modification Agreement (Oct. 14, 1983) (Doc. No. 70-0000088).

[11] See Renewal (Nov. 26, 1984) (Doc. No. DEK007663). On December 3, 1984, the Vice President of Citizens Bank wrote McDougal and enclosed the renewal note for note no. 5885. He informed McDougal that he needed to sign for the corporation, as an individual, and that "Mr. and Mrs. Clinton and your wife also need to sign in the lower right hand corner where indicated." Citizens Bank letter to Jim McDougal, Dec. 3, 1984. The loan was due on December 3, 1986. On May 4, 1985, Whitewater Development entered into the agreement with Wade's Ozark Air in which Ozark Air assumed the remaining principal balance of $95,591.00. See Security Release Agreement (May 4, 1985)

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(Doc. No. 70-0000114); Offer and Acceptance (May 17, 1985) (Doc. No. MGSL-FR-00000001). See Wade 4/12/94 GJ at 58-60 (describing how he agreed to assume $35,000 of the principal balance remaining on the loan).

[12] See Renewal (Mar. 26, 1987) (Doc. No. 70-00000146); Commercial Loan Application (Jan. 8, 1987) (Doc. No. DEK004614).

[13] See Renewal (Apr. 4, 1988) (Doc. No. 70-00000156). The maturation date was April 3, 1989.

[14] See Renewal (July 15, 1988) (Doc. No. DEK004120). The maturation date was set for November 3, 1991.

[15] McDougal took out a loan in Bill Clinton's name at Madison Guaranty on November 15, 1982 to provide the funds for this payment. See Credit Ledger for $25,555.02 noted, "23337-01 WW" (Nov. 18, 1982) (Doc. No. 66-00007589).

[16] This caused an overdraft in the Whitewater account, which was cleared by a $3,050.00 deposit on October 26, 1984 from Great Southern. See Check No. 121 from the account of Great Southern Land Co. signed by Susan McDougal payable to Whitewater Development for $650.00 (Oct. 25, 1984) (Doc. No. 54-17958-00000130); see Check No. 113 from the account of James McDougal Trustee signed by S. McDougal payable to Whitewater Development for $200.00 (Oct. 25, 1984) (Doc. No. 54-17958-00000132); see Check No. 118 from the account of Pembrook Manor signed by S. McDougal payable to Whitewater Development for $1,700.00 (Oct. 25, 1984) (Doc. No. 54-17958-00000132); see Check No. 204 from the account Smith-McDougal signed by James B. McDougal payable to Whitewater Development for $500.00 (Doc. No. GS-00007566).

[17] The funds were from a $7,500.00 check from Madison Marketing. The source of the Madison Marketing funds is unknown. See Unnumbered check from the account of Madison Marketing signed by S. McDougal payable to Whitewater Development for $7,500.00 (Nov. 8, 1985); Madison Guaranty Deposit Ticket for Whitewater Development Corp. for $7,500.00 (Nov. 8, 1985) (Doc. No. 054-01142852).

[18] McDougal took out a loan in Chris Wade's name at Madison Guaranty on July 11, 1983. The loan was as loan no. 1228 and was issued via Madison Guaranty Cashier's Check No. 3678. See Cashier Check No. 3678 from the account Madison Guaranty signed by Diana Warren payable to Chris Wade for $25,000.00 (July 11, 1983). This check was deposited into Wade's account at First Bank & Trust on July 15, 1983. That same day, Wade issued check no. 298 made payable to Madison Guaranty for $25,000.00. See Check No. 298 from the account of Chris Wade or Rosalee Wade payable to Madison Guaranty Savings for $25,000.00 (July 15, 1985) (Doc. No. 339-00000681). To pay back the Wade nominee loan, a $25,000.00 Whitewater Development check was written to Chris Wade. Whitewater initially classified this as a loan, but later changed it to reflect an expense of professional fees.

[19] This check was made payable to Madison Guaranty on August 1, 1983 from James B. McDougal's Trustee account and had the "Payoff Clinton" notation in the memo section. See Check No. 105 from the account of James B. McDougal Trustee signed by SH McDougal payable to Madison Guaranty for $5,081.82 noted "Payoff Clinton" (Aug. 1, 1983) (Doc. No. 54-17853-000000247).

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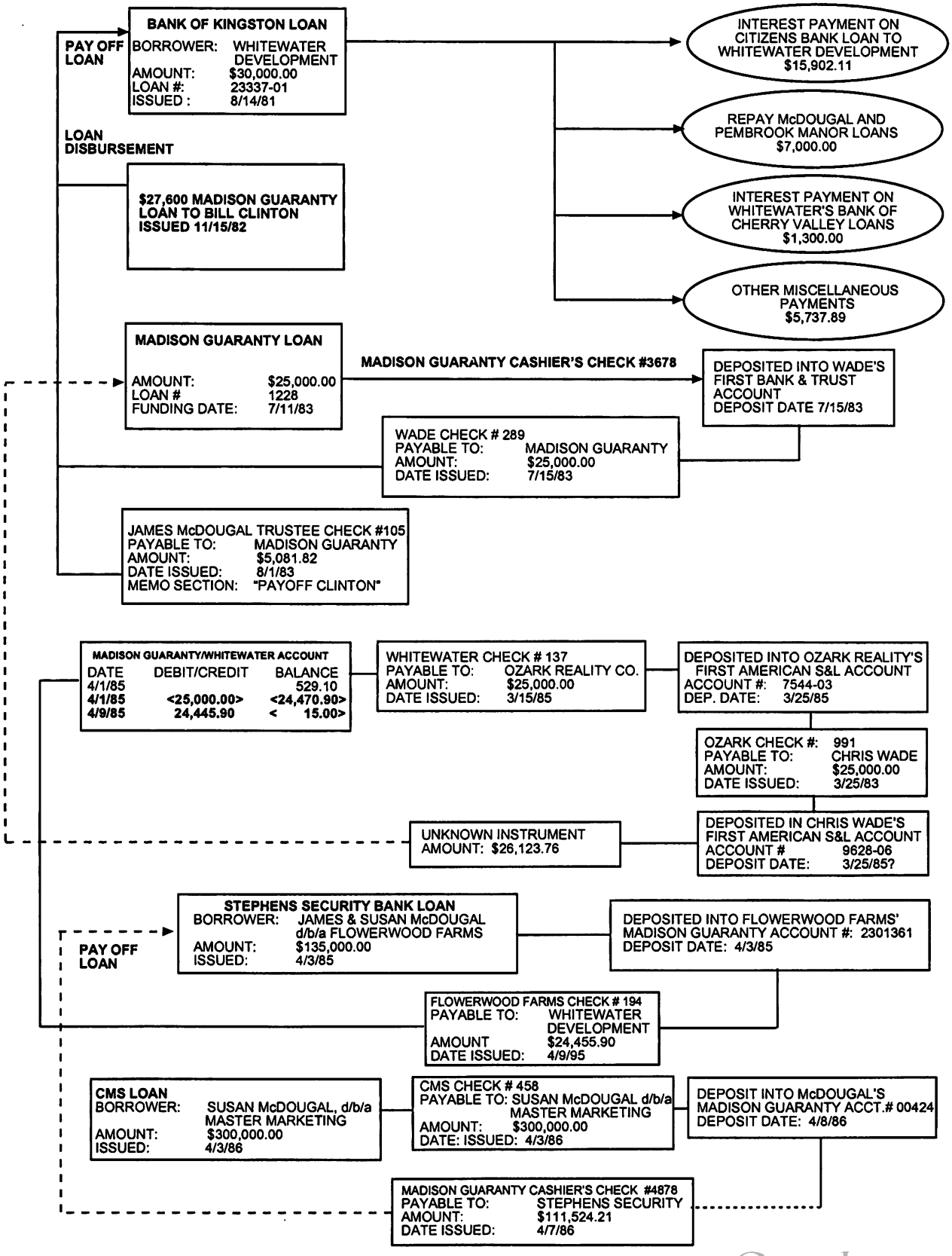
APPENDIX 3

HISTORY OF $27,600 MADISON GUARANTY LOAN ISSUED IN THE NAME OF BILL CLINTON

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HISTORY OF $27,600 MADISON GUARANTY LOAN ISSUED IN THE NAME OF BILL CLINTON



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APPENDIX 4

TOTAL LOANS, ADVANCES, AND REPAYMENTS MADE BY AND TO THE CLINTONS, THE McDOUGALS, AND McDOUGAL CONTROLLED ENTITIES TOWARDS THE WHITEWATER VENTURE; ERRORS FOUND IN THE LYONS REPORT BY THE INDEPENDENT COUNSEL

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I. TOTAL LOANS, ADVANCES, AND REPAYMENTS MADE BY AND TO THE CLINTONS TOWARDS THE WHITEWATER VENTURE.

The following schedule is a complete reconstruction of loans, advances, and repayments involving the Whitewater venture and the Clintons from 1979 until 1991 based on available records.[1] The list was assembled by professional accountants and investigators detailed to this Office, including agents from the IRS and the FBI. Loans and advances appear in regular type while repayments are listed in parentheses.

FISCAL YEAR	DATE	PAYOR	AMOUNT
1979	12/28/78	Hillary Rodham	$10,130.58[2]
1980	11/07/79	Not Identified	$4,599.64[3]
1980	12/7/79	Not Identified	$2,400.00[4]
1980	12/29/79	Hillary Rodham	$4,752.88[5]
1981	8/5/80	Not Identified	$4,350.00[6]
1981	8/23/80	Hillary Rodham	$9,000.00[7]
1982	2/16/82	Not Identified	$269.00[8]
1982	2/22/82	Blenda Howard	$(5,691.20)[9]
1983	11/15/82	Madison Guaranty	$27,600.00[10]
1983	7/11/83	Chris Wade	$(25,000.00)[11]
1983	8/1/83	James B. McDougal Trustee	$(2,600.00)[12]
1987	12/30/86	HR Clinton	$1,635.51[13]
1988	4/11/88	HR Clinton	$665.03[14]
1989	10/28/88	HR Clinton	$1,275.15[15]
1990	10/9/89	HR Clinton	$291.35[16]
1991	6/21/90	Carolyn Huber	$345.15[17]
1991	1/12/91	HR Clinton	$2,839.24[18]
Total Contributions – Repayments Made by the Clintons (FYs 1979-1991)			**$36,862.33**

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II. TOTAL LOANS, ADVANCES, AND REPAYMENTS MADE BY AND TO THE McDOUGALS, THROUGH THEMSELVES AND ENTITIES THEY CONTROLLED, TOWARDS THE WHITEWATER VENTURE.

The following schedule, which was reconstructed by OIC investigators, reflects the loans, advances, and repayments involving the Whitewater venture, the McDougals, and McDougal-controlled entities from 1978 until 1992 based on available records. The list was assembled by professional accountants and investigators detailed to this Office, including agents from the IRS and the FBI. Loans and advances appear in regular type while repayments are listed in parentheses.

FISCAL YEAR	DATE	PAYOR	AMOUNT
1979	2/5/79	Great Southern	$225.13[19]
1979	5/5/79	Great Southern	$4,452.70[20]
1980	6/28/79	Great Southern	$999.99[21]
1980	8/9/79	Great Southern	$4,577.78[22]
1980	9/18/79	Great Southern	$517.81[23]
1980	12/11/79	Great Southern	$(1,100.00)[24]
1980	12/20/79	James B. McDougal	$573.42[25]
1980	2/21/80	Flowerwood Farms	$1,000.00[26]
1980	5/5/80	James B. McDougal	$4,000.00[27]
1980	5/31/80	Great Southern	$25,874.88[28]
1981	6/11/80	Whitewater Development	$(1,000.00)[29]
1981	6/23/80	Great Southern	$700.00[30]
1981	7/15/80	James B. McDougal	$1,200.00[31]
1981	7/15/80	Great Southern	$400.00[32]
1981	8/5/80	James B. McDougal	$243.13[33]
1981	8/18/80	Smith-Tucker-McDougal	$2,000.00[34]
1981	8/25/80	Smith-Tucker-McDougal	$910.00[35]

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FISCAL YEAR	DATE	PAYOR	AMOUNT
1981	8/25/80	Smith-Tucker-McDougal	$266.53[36]
1981	9/1/80	Great Southern	$4,000.00[37]
1981	9/1/80	James B. McDougal	$(5,000.00)[38]
1981	9/27/80	Pembrook Manor	$32,000.00[39]
1981	10/8/80	Smith-Tucker-McDougal	$(3,176.53)[40]
1981	10/17/80	McDougal & Associates	$4,000.00[41]
1981	11/15/80	James B. McDougal	$3,800.00[42]
1981	12/16/80	James B. McDougal	$2,000.00[43]
1981	12/31/80	Pembrook Manor	$(28,000.00)[44]
1981	2/12/81	Great Southern	$1,200.00[45]
1981	2/13/81	Great Southern	$500.00[46]
1981	5/6/81	Great Southern	$170.02[47]
1982	9/14/81	Pembrook Manor	$(7,000.00)[48]
1982	9/15/81	James B. McDougal	$(10,000.00)[49]
1982	11/5/81	James B. McDougal	$(100.00)[50]
1982	12/2/81	James B. McDougal	$(1,000.00)[51]
1982	12/10/81	James B. McDougal	$(500.00)[52]
1982	12/24/81	Tucker-Smith-McDougal	$675.00[53]
1982	1/8/82	Great Southern	$1,450.00[54]
1982	2/18/82	James B. McDougal	$(1,000.00)[55]
1982	2/22/82	Rolling Manor	$766.85[56]
1982	3/24/82	Great Southern	$334.77[57]
1983	6/1/82	Great Southern	$488.00[58]
1983	6/9/82	James B. McDougal	$(741.62)[59]
1983	7/7/82	James B. McDougal	$258.14[60]
1983	8/9/82	James B. McDougal	$258.14[61]
1983	8/11/82	James B. McDougal	$258.14[62]

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FISCAL YEAR	DATE	PAYOR	AMOUNT
1983	8/25/82	James B. McDougal	$(1,560.00)[63]
1983	9/17/82	James B. McDougal	$(90.00)[64]
1983	10/7/82	Whitewater Development	$(120.00)[65]
1983	10/13/82	James B. McDougal	$(2,800.00)[66]
1983	10/19/82	James B. McDougal	$(262.00)[67]
1983	10/21/82	James B. McDougal	$(335.66)[68]
1983	10/28/82	James B. McDougal	$(355.00)[69]
1983	10/29/82	James B. McDougal	$(264.19)[70]
1983	11/4/82	James B. McDougal	$(1,164.31)[71]
1983	7/11/83	Chris Wade	$25,000.00[72]
1983	11/29/82	James B. McDougal	$(491.21)[73]
1983	12/21/82	Flowerwood Farms	$1,500.00[74]
1983	12/27/82	James B. McDougal	$400.00[75]
1983	2/14/83	Great Southern	$99.00[76]
1983	3/27/83	Great Southern	$300.00[77]
1984	8/6/83	James B. McDougal	$(5,000.00)[78]
1984	10/19/83	James B. McDougal	$18,584.28[79]
1984	2/14/84	James B. McDougal	$(600.00)[80]
1984	4/13/84	James B. McDougal	$(7,000.00)[81]
1985	8/28/84	Tucker-Smith-McDougal	$(750.00)[82]
1985	10/25/84	James B. McDougal	$200.00[83]
1985	10/26/84	Great Southern	$650.00[84]
1985	10/26/84	Pembrook Manor	$1,700.00[85]
1985	10/26/84	Tucker-Smith-McDougal	$7,500.00[86]
1985	10/26/84	Smith - McDougal	$500.00[87]
1985	11/6/84	Flowerwood Farms	$12,000.00[88]
1985	11/19/84	Madison Marketing	$5,566.39[89]

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FISCAL YEAR	DATE	PAYOR	AMOUNT
1985	12/6/84	James B. McDougal	$280.00[90]
1985	12/6/84	Tucker-Smith-McDougal	$1,600.00[91]
1985	12/6/84	Rolling Manor	$330.00[92]
1985	12/6/84	Pembrook Manor	$7,100.00[93]
1985	1/9/85	Smith - McDougal	$400.00[94]
1985	1/10/85	Flowerwood Farms	$1,430.00[95]
1985	1/10/85	Pembrook Manor	$730.00[96]
1985	1/10/85	Rolling Manor	$1,500.00[97]
1985	1/10/85	Tucker-Smith-McDougal	$600.00[98]
1985	1/28/85	Flowerwood Farms	$1,000.00[99]
1985	3/12/85	Rolling Manor	$1,900.00[100]
1985	3/12/85	Pembrook Manor	$900.00[101]
1985	3/12/85	Tucker-Smith-McDougal	$2,500.00[102]
1985	3/13/85	Tucker-Smith-McDougal	$500.00[103]
1985	3/22/85	Madison Guaranty	$(25,000.00)[104]
1985	4/9/85	Flowerwood Farms	$24,455.90[105]
1985	4/19/85	James B. McDougal	$(30,000.00)[106]
1985	4/30/85	James B. McDougal	$30,000.00[107]
1985	5/14/85	James B. McDougal	$(25,000.00)[108]
1986	7/2/85	James B. McDougal	$1,500.00[109]
1986	9/24/85	James B. McDougal	$(300.00)[110]
1986	10/10/85	Flowerwood Farms	$(100.00)[111]
1986	11/8/85	Madison Marketing	$7,500.00[112]
1986	11/19/85	Tucker-Smith-McDougal	$(400.00)[113]
1986	1/17/86	Tucker-Smith-McDougal	$(300.00)[114]
1986	2/11/86	Tucker-Smith-McDougal	$(300.00)[115]

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FISCAL YEAR	DATE	PAYOR	AMOUNT
1986	3/18/86	James B. McDougal	$(200.00)[116]
1986	5/31/86	James B. McDougal	$17,183.58[117]
1986	5/31/86	Flowerwood Farms	$(11,117.19)[118]
1986	5/31/86	Madison Marketing	$(5,566.39)[119]
1986	5/31/86	Smith-McDougal	$(500.00)[120]
1987	6/3/86	Flowerwood Farms	$1,000.00[121]
1987	6/3/86	Rolling Manor	$1,424.00[122]
1987	7/7/86	James B. McDougal	$(600.00)[123]
1987	7/25/86	James B. McDougal	$(325.00)[124]
1987	8/28/86	Flowerwood Farms	$(200.00)[125]
1987	11/6/86	James B. McDougal	$2,303.78[126]
1987	12/2/86	James B. McDougal	$(1,200.00)[127]
1987	12/30/86	Rolling Manor	$397.33[128]
1987	12/31/86	Flowerwood Farms	$1,422.59[129]
1987	3/1/87	James B. McDougal	$(620.80)[130]
1991	9/15/90	James B. McDougal	$(3,477.70)[131]
1991	11/21/90	James B. McDougal	$(1,400.00)[132]
1991	1/14/91	James B. McDougal	$(650.00)[133]
1991	4/19/91	My Paradise, Inc.	$(200.00)[134]
1991	5/20/91	My Paradise, Inc.	$(500.00)[135]
1991	5/21/91	James B. McDougal	$(5,656.70)[136]
1991	5/22/91	My Paradise, Inc.	$(1,300.00)[137]
1992	6/21/91	My Paradise, Inc.	$(490.00)[138]
1992	7/3/91	James B. McDougal	$(550.00)[139]
1992	7/16/91	Whitewater Development	$(296.40)[140]
1992	9/3/91	James B. McDougal	$(532.00)[141]
1992	10/25/91	Whitewater Development	$(76.85)[142]

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FISCAL YEAR	DATE	PAYOR	AMOUNT
1992	10/28/91	Ozark Air	$(678.00)[143]
1992	11/5/91	My Paradise, Inc.	$(400.00)[144]
1992	11/22/91	My Paradise, Inc.	$(76.85)[145]
1992	12/2/91	My Paradise, Inc.	$(432.00)[146]
1992	12/11/91	My Paradise, Inc.	$(924.00)[147]
1992	12/27/91	Ozark Escrow	$(247.85)[148]
1992	12/27/91	Ozark Escrow	$(173.00)[149]
1992	12/31/91	Ozark Air	$(678.00)[150]
1992	2/14/92	Ozark Air	$(246.00)[151]
1992	4/3/92	Whitewater Development	$(500.00)[152]
1992	4/6/92	Ozark Air	$(678.00)[153]
1992	5/18/92	Ozark Air	$(678.00)[154]
Total Contributions – Repayments (FY 1979 – 1992)			**$80,076.03**

III. LOANS, ADVANCES, AND REPAYMENTS ERRONEOUSLY INCLUDED IN THE LYONS REPORTS.

Loans and advances appear in plain text, while repayments appear in parentheses.

FISCAL YEAR	DATE	SOURCE OF PAYMENT	AMOUNT
1979	11/5/78	Great Southern	$4,752.88[155]
1979	12/19/78	Great Southern	$1,000.00[156]
1979	12/28/78	Great Southern	$(10,130.56)[157]
1979	1/27/79	Great Southern	$2,076.28[158]
1979	2/5/79	Great Southern	$2,526.53[159]
1979	4/17/79	Great Southern	$(3,000.00)[160]
1979	5/31/79	Great Southern	$276.90[161]
1979	6/6/79	Great Southern	$(2,032.50)[162]
1979	7/3/79	Great Southern	$(1,000.00)[163]

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FISCAL YEAR	DATE	SOURCE OF PAYMENT	AMOUNT
1979	9/14/79	Great Southern	$(5,000.00)[164]
1980	2/21/80	Great Southern	$500.00[165]
1981	4/20/81	Great Southern	$99.00[166]
1982	11/3/81	Edwina and Ray McCracken	$939.33[167]
1982	11/6/81	Great Southern	$(99.00)[168]
1983	10/21/82	Edwina and Ray McCracken	$872.50[169]
1986	5/31/86	Tucker-Smith-McDougal	$(1,000.00)[170]
1986	10/18/85	Ozark Air	$1,200.00[171]
1989 - 1991	5/31/89 – 5/31/91	Great Southern	$10,711.06[172]
1991	5/31/91	Unknown	$(4,144.98)[173]

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[1] As noted in the Final Lyons Report, "in many instances, documentation as to various transactions was incomplete or unavailable due, in part, to the passage of time and record retention policies of financial institutions. In some cases, documents could not be located or simply do not exist." Final Lyons Report at 3 (Mar. 23, 1992).

[2] See Check No. 697 from the account of Bill Clinton and Hillary Rodham signed by Hillary Rodham payable to Great Southern Land Company Inc. for $10,130.58 (Dec. 28, 1978) (Doc. No. DEK006616). Great Southern was a McDougal-controlled entity. The check served as a reimbursement for interest payments made by Great Southern on the Whitewater acquisition loans. The Clintons deducted this payment as an interest expense on their 1978 tax return. William J. & Hillary Clinton's Form 1040 (1978) (Doc. No. DEK 200501). This contribution was reported in the Lyons Report. See Final Lyons Report at 4 (Mar. 23, 1992).

[3] See Clinton checkbook register entry for Check No. 346 payable to Citizens Bank & Trust Co. for $4,599.64 (Nov. 7, 1979) (Doc. No. DEK011818). The check was noted "interest." The check served as an interest payment on Citizens Bank Loan No. 5885. This contribution was reported in the Lyons Report. See Lyons Report Clinton Transaction Summary at 1-2 (as of May 31, 1991) (Doc. Nos. DEK000082 through 83).

[4] See Union National Bank deposit ticket for the account of Whitewater Devel. Co. Inc. for $2,900.00 noting, "Clinton" (Dec. 7, 1979) (Doc. No. DEK000402). This contribution was included in the Lyons Report. See Final Lyons Report at 4 (Mar. 23, 1992). The corporate books reflected that $500 of this deposit was for the purchase of stock. Lyons treated the $2,400.00 deposit and the $500 stock purchase as separate and included both in his final total.

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See Letter from Bill Lyons to David Kendall (Mar. 22, 1994) (Doc. Nos. 863-0000006 through 008).

[5] See Check No. 396 from the account of Bill Clinton and Hillary Rodham signed by Hillary Rodham payable to Citizens Bank & Trust Co. for $4,752.88 noting, "Interest Payment" (Dec. 29, 1979) (Doc. No. DEK006610). The payment was listed as an interest deduction on the Clintons' 1979 tax return. William J. Clinton and Hillary D. Rodham's Form 1040 (1979) (Doc. No. DEK000343). The contribution was also reported in the Lyons Report. See Lyons Report Clinton Transaction Summary at 1-2 (as of May 31, 1991) (Doc. Nos. DEK000082 through 83).

[6] According to the Lyons Report Workpaper dated Oct. 18, 1993, this payment may have related to an August 1980 interest payment on Whitewater Developments Citizens Bank Loan No. 5885. On Aug. 20, 1980, the McDougals made a payment of $4,593.13 on Citizens Bank Loan No. 5885. Check No. 2373 from the account of James B. and Susan H. McDougal signed by James B. McDougal payable to Citizens Bank of Flippin for $4,593.13 (Aug. 20, 1983) (Doc. No. 66-00008048). The Clinton deduction of $4,350.00 may have been related to the reimbursement of this payment. The deduction is more likely, however, associated with a May 5, 1980, interest payment of $4,352.63 made by Whitewater Development with that included a $4,000 loan to Whitewater Development on that same day. No other documents related to this deduction were furnished to this Office, and no other documents were located during the investigation. This amount was reported on the Clintons' 1980 tax return as an interest deduction. William J. Clinton and Hillary Rodham's Form 1040 (1980) (Doc. No. DEK200346). This contribution was included in the Lyons Report. See Lyons Report Clinton Transaction Summary at 1-2 (as of May 31, 1991) (Doc. Nos. DEK000082 through 83).

[7] See Check No. 598 from the account of Bill Clinton and Hillary Rodham signed by Hillary Rodham payee left blank for $9,000.00 (Aug. 23, 1980) (Doc. No. DEK000691). The payment went towards the principal rather than the interest on Citizens Bank Loan No. 5885. The Clintons deducted this payment as an interest expense on their 1980 tax returns. William J. Clinton and Hillary Rodham's Form 1040 (1980) (Doc. No. DEK200346). This contribution was included in the Lyons Report. See Final Lyons Report at 5 (Mar. 23, 1992).

[8] See Bank of Kingston Deposit Ticket for the account of Whitewater Development Co., Inc. for $269.00 noting, "Hillary Rodham $269.00 Ins. premium" (Feb. 16, 1982) (Doc. No. DEK002661). The deposit reflected a repayment of an insurance premium to Whitewater Development by Mrs. Clinton. The Independent Counsel did not locate the canceled check for this deposit. This contribution was not included in the Lyons Report. See Final Lyons Report (Mar. 23, 1992) (Doc. Nos. 863-00000171-180).

[9] See Check No. 133 from the account of Whitewater Development Co., Inc. signed by Blenda Howard payable to Citizens Bank for $5,691.20 noting, "Note 585-270" (Feb. 22, 1982) (Doc. No. DEK500067). The check served as a repayment of Governor Clinton's personal loan at Citizens Bank, Loan No. 585-270, by Whitewater Development. This repayment to the Clintons was not included in the Lyons Report. See Final Lyons Report (Mar. 23, 1992) (Doc. Nos. 863-00000171 through 80).

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[10] This entry reflects the nominee loan taken out in Bill Clinton's name by Jim McDougal on November 15, 1982. See Check No. 924 cashier's check from the account of Madison Guaranty signed by John B. Thomas payable to "Bill Clinton" for $27,600 (Nov. 15, 1982) (Doc. Nos. MD-00000001 through 03); see also Jim McDougal & Curtis Wilkie, Arkansas Mischief 195 (1996).

[11] This entry reflects the nominee loan made to Chris Wade by Madison Guaranty. See Cashiers Check No. 3678 from the account of Madison Guaranty signed by Diana Warren payable to Chris Wade for $25,000.00 (July 11, 1983); see Check No. 298 from the account of Chris Wade or Rosalee Wade payable to Madison Guaranty for $25,000.00 (July 15, 1985) (Doc. No. 339-00000681).

[12] This entry reflects the final payment on principal made by the McDougals to retire the loan taken out in Bill Clinton's name on November 15, 1982. See Madison Guaranty handwritten ledger (Doc. No. 174-00235453); credit ledger for $5,081.82 noting, "23337-01 WW" (Doc. No. 54-17853-00000247).

[13] See Check No. 1623 from the account of Bill and Hillary Rodham Clinton signed by HR Clinton payable to Security Bank for $1,635.51 (Dec. 30, 1986) (Doc. No. DEK006629). The check reflected an interest payment on Security Bank Loan No. 957585, which was taken out to finance the Lot 13 modular home. This contribution was included in the Lyons Report. See Lyons Report Clinton Transaction Summary at 1-2 (as of May 31, 1991) (Doc. Nos. DEK000082 through 83).

[14] See Check No. 2159 from the account of Bill and Hillary Rodham Clinton signed by HR Clinton payable to Security Bank for $665.03 noted "Interest on note"(Apr. 11, 1988) (Doc. No. SBP 0059). It reflected an interest payment on the loan taken out to finance the modular home on lot 13. This contribution was included in the Lyons Report. See Lyons Report Clinton Transaction Summary at 1-2 (as of May 31, 1991) (Doc. Nos. DEK000082 through 83).

[15] See Check No. 2353 from the account of Bill Clinton or Hillary Rodham Clinton signed by HR Clinton payable to Ozarks Realty Co. for $1,275.15 (Oct. 28, 1988) (Doc. No. DEK000405). The memo section of the check noted "Reimb. for taxes" reflecting a reimbursement to Ozarks Realty by Mrs. Clinton for county taxes. This contribution was included in the Lyons Report. See Lyons Report Clinton Transaction Summary at 1-2 (as of May 31, 1991) (Doc. Nos. DEK000082 through 83).

[16] See Check No. 2726 from the account of Bill and Hillary Rodham Clinton signed by HR Clinton payable to Ozarks Realty for $291.35 (Oct. 9, 1989) (Doc. No. DEK000413). It reflected a reimbursement for county taxes. This contribution was included in the Lyons Report. See Lyons Report Clinton Transaction Summary at 1-2 (as of May 31, 1991) (Doc. Nos. DEK000082 through 83).

[17] See Check No. 028402 from the account of the Rose Law Firm signed by Carolyn Huber payable to Secretary of State for $345.15 noting, "Franchise Tax, Hillary R. Clinton-

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Personal Account." (June 21, 1990) (Doc. No. DEK006631). This contribution was included in the Lyons Report. See Lyons Report Clinton Transaction Summary at 1-2 (as of May 31, 1991) (Doc. Nos. DEK000082 through 83).

[18] See Statement from Redden & Company to Hillary Clinton re: Whitewater Development Company, Inc. income tax returns showing $2,839.24 balance due (June 1, 1990) (Doc. No. LP 02409); Check No. 3202 from the account of Bill Clinton or Hillary Rodham Clinton signed by HR Clinton payable to Redden & Company for $2839.24 (June 12, 1990) (Doc. No. A0008204), reflecting payment to Redden & Company for preparation of Whitewater Development Corporate Federal and State Income Tax Returns for fiscal years 1987, 1988, and 1989. This contribution was included in the Lyons Report. See Lyons Report Clinton Transaction Summary at 1-2 (as of May 31, 1991) (Doc. Nos. DEK000082 through 83).

[19] Great Southern made this payment on Whitewater Development's Loan No. 5885 at Citizens Bank. This payment was not reimbursed by the Clintons. Note Due Notice from Citizens Bank & Trust Co. to James B. McDougal or Bill Clinton showing a payment of $225.13 (due date Feb. 5, 1979) (Doc. No. DEK003312); Workpaper prepared by Whitewater Development accountant showing Great Southern payment of $225.13 (Doc. No. DEK000571). Great Southern also made a payment of $4,377.68 on Loan No. 5885 at Citizens Bank, and was reimbursed by the Clintons for the entire amount via their Check No. 697, dated December 28, 1978, in the amount of $10,130.58. See Check No. 697 from the account of Bill Clinton or Hillary Rodham payable to Great Southern Land Company Inc. for $10,130.58 (Dec. 28, 1978) (Doc. No. DEK001152).

[20] Payment on Whitewater Development acquisition loan at Citizens Bank by Great Southern. See Note Due Notice from Citizens Bank & Trust Co. to James B. McDougal showing payment of $4,452.70 noting, "5/5/79, #323" (due date May 5, 1979) (Doc. No. DEK003312) (the Independent Counsel did not locate this check during the course of his investigation); Workpaper prepared by Whitewater Development accountant Charles E. James, listing amount as a payment by Great Southern. This payment was reported in the Lyons Report. See Lyons Report Analysis of Source and Use of Cash (Mar. 18, 1992) (Doc. No. DEK001152).

[21] Great Southern made this payment on Whitewater Development Acquisition Loan No. 4197 at Union National; Bank Ledger Sheet showing same payment of $999.99 (June 28, 1979) (Doc. No. GS-00014384); Workpaper prepared by Whitewater Development accountant Charles E. James, listing item as amount paid by Great Southern. This payment was reported in the Lyons Report. See Lyons Report Analysis of Source and Use of Cash (Mar. 18, 1992) (Doc. No. DEK001152).

[22] Payment on Whitewater Development Acquisition Loan No. 5885 at Citizens Bank was made by Ms. McDougal who was then reimbursed by Great Southern. Check No. 215 from the account of James B. or Susan H. McDougal signed by Susan H. McDougal payable to Citizens Bank and Trust Co. for $4,577.78 noting, "Interest Note no. 5885." (Aug. 9, 1979) (Doc. No. 66-00009703). The McDougal's checkbook register for Check No. 215 noting, "Interest GSLC." (Doc. No. 66-00009098); Union National Bank Deposit Ticket for the account of James

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B. and Susan H. McDougal for $4,577.78 noting, "Reimb int. GSLC $4,577.78" (Aug. 17, 1979) (Doc. No. 66-00007683). This payment was reported in the Lyons Report. See Lyons Report Analysis of Source and Use of Cash (Mar. 18, 1992) (Doc. No. DEK001152).

[23] Great Southern payment on Whitewater Development Acquisition Loan No. 4197 at Union National. Union National ledger sheet showing payment of interest for $517.81 (Sept. 18, 1979) (Doc. No. GS-00014384); Workpaper prepared by Whitewater Development accountant Charles E. James, showing same amount paid by Great Southern. This payment was reported in the Lyons Report. See Lyons Report Analysis of Source and Use of Cash (Mar. 18, 1992) (Doc. No. DEK001152).

[24] Repayment of loan by Whitewater Development to Great Southern. See Check No. 102 from the account of Whitewater Development Company, Inc. signed by Charles E. James payable to Great Southern Land Company, Inc. for $1,100.00 (Dec. 11, 1979) (Doc. No. DEK501284). The repayment was reported in the Lyons Report. See Lyons Report Analysis of Source and Use of Cash (Mar. 18, 1992) (Doc. No. DEK001152).

[25] Interest payment on Whitewater Development Acquisition Loan No. 4197 at Union National. See Check No. 1516 from the account of James B. and Susan H. McDougal signed by James B. McDougal payable to Union National Bank for $573.42 noting, "Interest Note no. 0004197" (Dec. 20, 1979) (Doc. No. 66-00000923); see also McDougal's checkbook register for Check No. 1516 (Dec. 20, 1979) (Doc. No. 66-00009149).

[26] Loan to Whitewater Development from Flowerwood Farms, Inc. See Union National Bank Deposit Ticket for Whitewater Development Company for $1,000 noting, "Flowerwood Farms, Inc. (Loan)" (Feb. 21, 1980) (Doc. No. DEK501315); see also Lyons Report Analysis of Source and Use of Cash (Mar. 18, 1992) (Doc. No. DEK001152).

[27] Loan made to Whitewater Development by Jim McDougal. See Union National Bank Deposit Ticket for the account of Whitewater Development Company for $4,000 noting, "James B. McDougal (Loan)" (May 5, 1980) (Doc. No. DEK501253). This contribution was reported in Lyons Report. See Lyons Report Analysis of Source and Use of Cash (Mar. 18, 1992) (Doc. No. DEK001152).

[28] Expenses paid by Great Southern for Whitewater Development. These expenses were entered on the Whitewater Development books via Whitewater Development accountants year-end Adjusting Entry No. 2. Expenses entered via this adjusting entry totaled $26,392.69. The difference between the $26,392.69 and the $25,874.88 is interest of $517.81. See Workpapers prepared by Whitewater Development accountant Charles E. James, for items paid by Great Southern for Whitewater Development (Doc. Nos. DEK000571, 2819, 4030, 4037, 4038, 4039, 4042, 4050, 4052). This payment was reported in the Lyons Report. See Lyons Report Analysis of Source and Use of Cash (Mar. 18, 1992) (Doc. No. DEK001152).

[29] Repayment of loan by Whitewater Development to Flowerwood Farms. See Check No. 113 from the account of Whitewater Development Company, Inc. signed by Charles E.

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James payable to Flowerwood Farms for $1,000.00 (June 11, 1980) (Doc. No. DEK501369). The check was drawn on Union National and noting, "Repay Loan"; see also Whitewater Development checkbook register entry for Check No. 113 (June 11, 1990) (Doc. No. DEK002826); Lyons Report Analysis of Source and Use of Cash (Mar. 18, 1992) (Doc. No. DEK001152).

[30] Loan to Whitewater Development from Great Southern. See Union National Bank Deposit Ticket Whitewater Development for $700.00 noting, "GSLC, Inc. (Loan) " (June 23, 1980) (Doc. No DEK501353). This payment was reported in the Lyons Report. See Lyons Report Analysis of Source and Use of Cash (Mar. 18, 1992) (Doc. No. DEK001152).

[31] Loan made to Whitewater Development by Jim McDougal. See Check No. 2344 from the account of James B. and Susan H. McDougal signed by James B. McDougal payable to Whitewater Development Corp. for $1,200.00 (July 14, 1980) (Doc. No. 66-00011018); see also McDougal checkbook register entry for Check No. 2344 (July 14, 1980) (Doc. No. 66-00002558). This contribution was reported in Lyons Report. See Lyons Report Analysis of Source and Use of Cash (Mar. 18, 1992) (Doc. No. DEK001152).

[32] Loan to Whitewater Development from Great Southern. See Union National Bank Deposit Ticket for Whitewater Development Co., Inc. for $400.00 noting, "GSLC, Inc." (July 15, 1980) (Doc. No. DEK501380). This payment was reported in the Lyons Report. See Lyons Report Analysis of Source and Use of Cash (Mar. 18, 1992) (Doc. No. DEK001152).

[33] Interest payment on Whitewater Development acquisition loan at Citizens Bank. The payment was originally made by James B. and Susan H. McDougal in the amount of $4,593.13. The Lyons Report, Note G, explains that the Clintons made an interest payment of $4,350.00 on August 5, 1980. Lyons Report Clinton Transaction Summary at 1 (as of May 31, 1991) (Doc. No. DEK000082). This payment was not applied directly to Citizens Bank Loan No. 5885. The payment was apparently given to Jim McDougal personally in the same manner as the $9,000.00 Clinton payment on August 23, 1980. Thus the McDougal payment of $4,593.13 would be reduced by the $4,350.00 reimbursement for a net loan by Jim McDougal of $243.13. See Check No. 2373 from the account of James B. and Susan H. McDougal payable to Citizens Banks of Flippin for $4,593.13 (Aug. 20, 1980).

[34] Payment made directly to Miguon Frances by Jim McDougal with Smith-Tucker-McDougal funds for deposit on Whitewater Development modular home. See Check No. 140 from the account of Smith-Tucker-McDougal signed by James B. McDougal payable to Miguon Frances for $2,000.00 noting, "Deposit on modular home to be delivered within 30 days." (Aug. 18, 1980) (Doc. No. 66-00000424); see also Smith-Tucker-McDougal checkbook register entry for Check No. 140 noting, "Loan to WW" (Aug. 18, 1980) (Doc. No. 66-00000427).

[35] Payment made directly to Jerod Nichols by Jim McDougal with Smith-Tucker-McDougal funds for Whitewater Development road work. See Check No. 145 from the account of Smith-Tucker-McDougal signed by James B. McDougal payable to Jeral Nichols for $910.00 (Aug. 25, 1980) (Doc. No. 66-00000453); see also Smith-Tucker-McDougal checkbook register

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entry for Check No. 145 noting, "Loan to WW Roadwork" (Aug. 25, 1980) (Doc. No. 66-00000248).

[36] Payment made directly to Ozark Realty Co. by Jim McDougal with Smith-Tucker-McDougal funds for Whitewater Development road work. See Check No. 146 from the account of Smith-Tucker-McDougal signed by James B. McDougal payable to Ozark Realty Co. for $266.53 (Aug. 25, 1980) (Doc. No. 66-00000432); see also Smith-Tucker-McDougal checkbook register entry for Check No. 146 noted "Loan to WW Roadwork" (Aug. 25, 1980) (Doc. No. 66-00000250).

[37] Loan to Whitewater Development from Great Southern. See Union National Bank Deposit Ticket for Whitewater Development Co., Inc. for $4,000.00 noting, "GSLC, Inc. (Loan)" (Sept. 1, 1980) (Doc. No. DEK501394); Lyons Report Analysis of Source and Use of Cash (Mar. 18, 1992) (Doc. No. DEK001152).

[38] Repayment of loan by Whitewater Development to McDougal. See Check No. 116 from the account of Whitewater Development Co., Inc. signed by Charles E. James payable to James B. McDougal for $5,000.00 noting, "Repay Loan." (Sept. 1, 1980) (Doc. No. DEK501398). This repayment was reported in the Lyons Report. See Lyons Report Analysis of Source and Use of Cash (Mar. 18, 1992) (Doc. No. DEK001152).

[39] Loan to Whitewater Development from Pembrook Manor. See Pembrook Manor checkbook register entry for Check No. 1101 noting "Whitewater Development Corp. Loan $32,000.00" (Sept. 27, 1980) (Doc. No. 66-00000635); see also Union National Bank Deposit Ticket for Whitewater Development Co., Inc. for $32,000.00 noting, "Loan Pembrook" (Sept. 27, 1980) (Doc. No. DEK501390); Lyons Report Analysis of Source and Use of Cash (Mar. 18, 1992) (Doc. No. DEK001152).

[40] Repayment by Whitewater Development to Smith-Tucker-McDougal for three payments made by Smith-Tucker-McDougal on behalf of Whitewater Development. See Whitewater Development checkbook register entry for Check No. 125 noting, "Smith-Tucker-McDougal Repay for Bills Paid $3,176.53" (Oct. 8, 1980) (Doc. No. DEK003355); Whitewater Development ledger reflecting Check No. 125 (Oct. 8, 1980) (Doc. No. DEK00591).

[41] Loan to Whitewater Development from McDougal & Associates. See Union National Bank Deposit Ticket for Whitewater Development Co., Inc. for $4,000 noting, "Loan-McD & Assoc." (Oct. 17, 1980) (Doc. No. DEK 501304).

[42] Loan from Jim McDougal to Whitewater Development. See Check No. 17 from the account of James B. McDougal payable to Whitewater Development for $3,800.00 (Nov. 15, 1980) (Doc. No. 66-00011020); see also Bank of Kingston Deposit Ticket for the account of Whitewater Development Co., Inc. for $3,800 noting, "James B. McDougal" (Nov. 15, 1980) (Doc. No. DEK500639). This contribution was reported in the Lyons Report. See Lyons Report Analysis of Source and Use of Cash (Mar. 18, 1992) (Doc. No. DEK001152).

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[43] Loan from Jim McDougal to Whitewater Development. See Whitewater Development ledger noting receipt of $2,000.00 posted "Loan-JBM" (Doc. No. LP 00410); Unnumbered Check from the account of Tucker-Smith-McDougal signed by Tucker-Smith McDougal payable to Whitewater for $2,000.00 (Dec. 16, 1980) (Doc. No. 66-00000802); see also Bank of Kingston Deposit Ticket for Whitewater Dev. Co. for $2,000 (Dec. 16, 1980) (Doc. No. DEK500567). This contribution was reported in the Lyons Report. See Lyons Report Analysis of Source and Use of Cash (Mar. 18, 1992) (Doc. No. DEK001152).

[44] Repayment of loan by Whitewater Development to Pembrook Manor. See Check No. 102 from the account of Whitewater Development Cor., Inc. signed by Susan H. McDougal payable to Pembrook Manor, Inc. for $28,000.00 noting, "Loan Payment" (Dec. 31, 1980) (Doc. No DEK 500651); Lyons Report Analysis of Source and Use of Cash (Mar. 18, 1992) (Doc. No DEK001153).

[45] Loan to Whitewater Development from Great Southern. See Check No. 104 from the account of Great Southern Land Co. Inc. signed by Blenda Howard payable to Whitewater Development Co. for $1,200.00 noting, "Loan." (Feb. 12, 1981); see also Bank of Kingston Deposit Ticket for Whitewater Development for $1,200 noting, "GSLC Loan $1,200.00" (Feb. 12, 1981) (Doc. No. DEK002151); Lyons Report Analysis of Source and Use of Cash (Mar. 18, 1992) (Doc. No. DEK001153).

[46] Loan to Whitewater Development from Great Southern. See Check No. 106 from the account of Great Southern Land Co. Inc. signed by Blenda Howard payable to Whitewater Development for $500 noting, "loan." (Feb. 13, 1981) (Doc. No. 66-00007499); Bank of Kingston Deposit Ticket for Whitewater Development Co. Inc. for $500 noting, "GSLC Loan" (Feb. 13, 1981) (Doc. No. DEK002152); see also Lyons Report Analysis of Source and Use of Cash (Mar. 18, 1992) (Doc. No. DEK001153).

[47] A check for $170.02 noting "Nunes" was deposited into the Whitewater Development account on May 6, 1981. The payment was income of Great Southern and not income of Whitewater Development. Whitewater Development did not sell a lot to a "Nunes." See Bank of Kingston Deposit Ticket for Whitewater Development for $170.02 noting, "Nunes" (May 6, 1981) (Doc. No. DEK501143). This payment was included in the Lyons Report. See Lyons Report Analysis of Source and Use of Cash (Mar. 18, 1992) (Doc. No. DEK001153).

[48] Repayment of loan by Whitewater Development to Pembrook Manor. See Check No. 119 from the account of Whitewater Development signed by Blenda Howard payable to Pembrook Manor for $7,000 (Sept. 14, 1981) (Doc. No. DEK500582); see also Lyons Report Analysis of Source and Use of Cash (Mar. 18, 1992) (Doc. No. DEK001153).

[49] Repayment of loan to Whitewater Development by Jim McDougal. See Check No. 120 from the account of Whitewater Development signed by James B. McDougal payable to James B. McDougal for $10,000 noting, "Repay Loan" (Sept. 15, 1981) (Doc. No. DEK500580); Whitewater Development checkbook register (Doc. No. DEK003053). This repayment was

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reported in the Lyons Report. See Lyons Report Analysis of Source and Use of Cash (Mar. 18, 1992) (Doc. No. DEK001153).

[50] Repayment of loan by Whitewater Development to Jim McDougal. See Check No. 124 from the account of Whitewater Development signed by Blenda Howard payable to James B. McDougal for $100 noting, "loan" (Nov. 5, 1981) (Doc. No. DEK 500599); Whitewater Development checkbook register entry for Check No. 124 noting, "loan"(Doc. No. DEK 500494). This repayment was reported in the Lyons Report. See Lyons Report Analysis of Source and Use of Cash (Mar. 18, 1992) (Doc. No. DEK001153).

[51] Repayment of loan by Whitewater Development to Jim McDougal. See Check No. 127 from the account of Whitewater Development signed by S.H. McDougal payable to James B. McDougal for $1,000 (Dec. 2, 1981) (Doc. No. DEK 500592); Whitewater Development checkbook register (Doc. No. DEK 500501). This repayment was reported in the Lyons Report. See Lyons Report Analysis of Source and Use of Cash (Mar. 18, 1992) (Doc. No. DEK001153).

[52] Repayment of loan by Whitewater Development to Jim McDougal. See Check No. 128 from the account of Whitewater Development signed by Susan H. McDougal. payable to James B. McDougal for $500.00 noting, "5-309-0" (Dec. 10, 1981) (Doc. No. DEK 500590); Whitewater Development checkbook register entry for Check No. 127 (Doc. No. DEK 500502). This repayment was reported in the Lyons Report. See Lyons Report Analysis of Source and Use of Cash (Mar. 18, 1992) (Doc. No. DEK001153).

[53] Payment made directly to G.W. Burris, Burris Construction, by Jim McDougal with Tucker-Smith-McDougal funds for work on house on Whitewater Development Lot 13. See Tucker-Smith-McDougal ledger sheet listing payment to G.W. Burris for $675.00 with the notation, "Loan - WW, McD draw - loan to Whitewater."

[54] Loan to Whitewater Development from Great Southern. See Bank of Kingston Deposit Ticket for Whitewater Development for $1,450 noting, "GSLC Loan" (Jan. 8, 1982) (Doc. No. DEK 500712); see also Lyons Report Analysis of Source and Use of Cash (Mar. 18, 1992) (Doc. No. DEK001153).

[55] Repayment of loan by Whitewater Development to Jim McDougal. See Whitewater Development checkbook register entry for Check No. 132 noting, "2/18/82, Counter Check to JBMc written by Susan, $1,000.00"(Feb. 18, 1982) (Doc. No. DEK 500503); Whitewater Development bank statement reflecting two withdrawals totaling $6,691.20 and one numbered check in the amount of $5,691.20 (Feb. 18, 1982) (Doc. No. DEK 500065). This repayment was reported in the Lyons Report. See Lyons Report Analysis of Source and Use of Cash (Mar. 18, 1992) (Doc. No. DEK001153).

[56] Loan to Whitewater Development from Rolling Manor. See Bank of Kingston Deposit Ticket for Whitewater Development for $766.85 noting, "Rolling Manor, loan" (Feb. 22, 1982) (Doc. No. DEK500768); Lyons Report Analysis of Source and Use of Cash (Mar. 18, 1992) (Doc. No. DEK001153).

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[57] Loan to Whitewater Development from Great Southern. See Check No. 122 from the account of Great Southern Land Co. Inc. signed by Blenda Howard payable to Whitewater Development for $334.77 noting, "loan" (Mar. 24, 1982) (Doc. No. 66-00007495); see also Bank of Kingston Deposit Ticket for Whitewater Development for $334.77 noting, "Loan GSLC" (Mar. 24, 1982) (Doc. No. DEK 500820); Lyons Report Analysis of Source and Use of Cash (Mar. 18, 1992) (Doc. No. DEK001153).

[58] Loan to Whitewater Development from Great Southern. See Check No. 125 from the account of Great Southern Land Co. Inc. signed by Blenda Howard payable to Whitewater Dev. Corp. for $488.00 (June 1, 1982) (Doc. No. 66-00007493); see also Bank of Kingston Deposit Ticket for Whitewater Development for $488.00 noting, "transfer from GSLC" (June 1, 1982) (Doc. No. DEK002154); Lyons Report Analysis of Source and Use of Cash (Mar. 18, 1992) (Doc. No. DEK001153).

[59] Repayment of loan by Whitewater Development to Jim McDougal. See Check No. 141 from the account of Whitewater Development signed by James B. McDougal payable to Jim McDougal for $741.62 (June 9, 1982) (Doc. No. DEK 500050); Whitewater Development checkbook register entry for Check No. 141 (Doc. No. DEK500471). This repayment was reported in the Lyons Report. See Lyons Report Analysis of Source and Use of Cash (Mar. 18, 1992) (Doc. No. DEK001153).

[60] McDougal payment on Whitewater Development loan at the Bank of Cherry Valley. See Check No. 121 from the account of James B. McDougal Trustee signed by Blenda Howard payable to Bank of Cherry Valley for $258.14 (July 7, 1982).

[61] McDougal payment on Whitewater Development loan at the Bank of Cherry Valley. See Check No. 123 from the account of James B. McDougal Trustee signed by Blenda Howard payable Bank of Cherry Valley for $258.14 noting, "for June payment..."(Aug. 9, 1982).

[62] McDougal payment on Whitewater Development loan at the Bank of Cherry Valley. See Bank of Cherry Valley general ledger credit slip in the amount of $258.14; Bank of Cherry Valley note showing payment of $258.14 on July 12, 1982, August 9, 1982, and August 11, 1982 (Doc. No. DEK006491).

[63] Repayment of loan by Whitewater Development to Jim McDougal. See Check No. 147 from the account of Whitewater Development signed by Blenda Howard payable to Madison Bank and Trust for $1,560 noting, "JBM OD" (Aug. 25, 1982) (Doc. No. DEK 500005); Whitewater Development checkbook register noting, "8/25/82, Check No. 147, To: MB&T, For: JBM OD checks (American Express)" (Doc. No. DEK500473). This repayment was reported in the Lyons Report. See Lyons Report Analysis of Source and Use of Cash (Mar. 18, 1992) (Doc. No. DEK001154).

[64] Repayment of loan by Whitewater Development to Jim McDougal. See Check No. 148 from the account of Whitewater Development signed by Blenda Howard and made payable to James B. McDougal (Sept. 17, 1982) (Doc. No. DEK500664); Whitewater Development

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checkbook register noting, "9/17/82, check number 148, To: JBM, For: ODJc" (Doc. No. DEK 500473). This repayment was reported in the Lyons Report. See Lyons Report Analysis of Source and Use of Cash (Mar. 18, 1992) (Doc. No. DEK001154).

[65] Repayment of loan to Whitewater Development to Great Southern. See Whitewater Development checkbook register Check No. 149 noting, "To: GSLC" (Oct. 7, 1982) (Doc. No. DEK 500474); Whitewater Development bank statement for period ending Oct. 29, 1982, for checking account at Bank of Kingston listing Check No. 149 in the amount of $120.00 clearing the bank on Oct. 7, 1982 (Doc. No. 66-00000194); see also Lyons Report Analysis of Source and Use of Cash (Mar. 18, 1992) (Doc. No. DEK001154).

[66] Repayment of loan by Whitewater Development to Jim McDougal. See Whitewater Development checkbook register entry for Check No. 151 for $2,800 noting, "10/13/82, check number 151, To: JBM, For: repay loan" (Oct. 10, 1982) (Doc. No. DEK 500474). This repayment was reported in the Lyons Report. See Lyons Report Analysis of Source and Use of Cash (Mar. 18, 1992) (Doc. No. DEK001154).

[67] Repayment of loan by Whitewater Development to Jim McDougal. See Whitewater Development checkbook register for Check No. 152 for $262 noting, "To: JBM, For: OD" (Oct. 19, 1982) (Doc. No. DEK 500475). This repayment was reported in the Lyons Report. See Lyons Report Analysis of Source and Use of Cash (Mar. 18, 1992) (Doc. No. DEK001154).

[68] Repayment of loan by Whitewater Development to Jim McDougal. See Whitewater Development checkbook register, for Check No. 153 for $335.665 noting, "10/21/82, check number 153, To: JBM, For: OD" (Oct. 21, 1982) (Doc. No. DEK500475). See Lyons Report Analysis of Source and Use of Cash (Mar. 18, 1992) (Doc. No. DEK001154).

[69] Repayment of loan by Whitewater Development to Jim McDougal. See Whitewater Development checkbook register, for Check No. 154 for $355 noting, "10/28/82, check number 154, JBM, OD" (Oct. 28, 1982) (Doc. No. DEK 500475). This repayment was reported in the Lyons Report. See Lyons Report Analysis of Source and Use of Cash (Mar. 18, 1992) (Doc. No. DEK001154).

[70] Repayment of loan by Whitewater Development to Jim McDougal. See Check No. 155 from the account of Whitewater Development signed by Blenda Howard payable to Tax Collector for $264.19 noting, "JB McDougal property tax"(Oct. 29, 1982) (Doc. No. DEK501439). Whitewater Development checkbook register entry for Check No. 155 noting, "to tax collector, For JBM"(Doc. No. DEK500476). This repayment was reported in the Lyons Report. See Lyons Report Analysis of Source and Use of Cash (Mar. 18, 1992) (Doc. No. DEK001154).

[71] Repayment of loan by Whitewater Development to Jim McDougal. See Check No. 156 for the account of Whitewater Development signed by Blenda Howard and made payable to James B. McDougal for $1,164.31 (Nov. 4, 1982) (Doc. No. DEK501443). This repayment was

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reported in the Lyons Report. See Lyons Report Analysis of Source and Use of Cash (Mar. 18, 1992) (Doc. No. DEK001154).

[72] Repayment of Whitewater Development loan to Madison Bank. See Whitewater Development Adjusting Journal Entry No. 14 for May 31, 1985, which records payment of note at Madison Bank by "JBM personally." The difference between the amount recorded in the journal entry, $25,855.02, and the actual principal paid, $25,555.02, was apparently due to bookkeeping errors. The payoff of the loan by Jim McDougal was made in 1982, but was not recorded on the Whitewater books until 1985 (Doc. No. LP 00454); see also credit slip dated Nov. 18,1982 noting "IEWC on Loan, 23337-01 WW", in the amount of $2,044.98, credit slip dated 11/18/82 noting "L&D,23337-01 W.W." in the amount of $25,555.02. ($2,044.98 + $25,555.02 = $27,600.00) (Doc. No. 66-00007589).

[73] Repayment of loan by Whitewater Development to Jim McDougal. See Check No. 158 from the account of Whitewater Development signed by Blenda Howard payable to James B. McDougal for $491.21 (Nov. 29, 1982) (Doc. No. DEK 501445). This repayment was reported in the Lyons Report. See Lyons Report Analysis of Source and Use of Cash (Mar. 18, 1992) (Doc. No. DEK001154).

[74] Loan to Whitewater Development from Flowerwood Farms. See Madison Bank Deposit Ticket for Whitewater Development for $1,500 noting, "FF loan $1,500.00" (Dec. 27, 1982) (Doc. No. DEK 501461); Whitewater Development checkbook register entry, dated December 21, 1982 noting, "money borrowed from FF $1,500.00" (Doc. No. DEK 500477); see also Lyons Report Analysis of Source and Use of Cash (Mar. 18, 1992) (Doc. No. DEK001154).

[75] Loan to Whitewater Development from Jim McDougal from Account No. 0001-044-7, James B. McDougal, Trustee, Bank of Kingston. See Madison Bank Deposit Ticket for Whitewater Development for $400 noting, "Trustee loan" (Dec. 27, 1982) (Doc. No. DEK 500477); Checkbook Register entry showing deposit for $400.00 (Doc. No. DEK 500477). This contribution was reported in the Lyons Report. See Lyons Report Analysis of Source and Use of Cash (Mar. 18, 1992) (Doc. No. DEK001154).

[76] A check noting "Martin" in the amount of $99.00 was deposited into the Whitewater Development account at Citizens Bank. This check was income of Great Southern; Whitewater Development did not sell a lot to anyone named "Martin." See Citizens Bank and Trust Deposit Ticket for Whitewater Development for $99.00 noting, "Martin" (Feb. 14, 1983) (Doc. No. DEK010383).

[77] Loan to Whitewater Development from Great Southern. See Madison Guaranty Deposit Ticket for Whitewater Development for $300.00 noting, "GSLC Loan" (Mar. 27, 1983) (Doc. No. DEK 501430); see also Lyons Report Analysis of Source and Use of Cash (Mar. 18, 1992) (Doc. No. DEK001154).

[78] Repayment of loan by Whitewater Development by Jim McDougal. See Check No. 108, from the account of Whitewater Development signed by James B. McDougal payable to

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James B. McDougal for $5,000 (Aug. 6, 1983) (Doc. No. DEK501583). This repayment was reported in the Lyons Report. See Lyons Report Analysis of Source and Use of Cash (Mar. 18, 1992) (Doc. No. DEK001154).

[79] Loan to Whitewater Development by Jim McDougal. See Madison Guaranty Deposit Ticket for Whitewater Development for $18,584.28 noting, "# 279 $17,000.00, # 000108 $1584.28" (Doc. No. DEK 501563); journal entry showing loan of $18,584.28 by JBM on Oct. 19, 1983. (Doc. No. LP 00419). This loan was reported in the Lyons Report. See Lyons Report Analysis of Source and Use of Cash (Mar. 18, 1992) (Doc. No. DEK001154).

[80] Repayment of loan by Whitewater Development to Jim McDougal. See Check No. 114 from the account of Whitewater Development signed by S. McDougal payable to James B. McDougal for $600.00 (Feb. 14, 1984) (Doc. No. 501578). This repayment was reported in the Lyons Report. See Lyons Report Analysis of Source and Use of Cash (Mar. 18, 1992) (Doc. No. DEK001154).

[81] Repayment of loan to Whitewater Development by Jim McDougal. See Warranty Deed conveying property to Wade by Whitewater Development, filed Apr. 24, 1984; see also ledger page provided by Wade which reflects Apr. 13, 1984, loan in the amount of $7,000.00 he obtained at First Bank & Trust, Mountain Home, Arkansas to purchase forty acres noting, "McDougal" (Doc. No. 355-00053794); Chris Wade 5/15/95 FBI Int. at 5 (stating Wade purchased forty acres from Whitewater Development or McDougal personally and paid $6,000.00 to $8,000.00). This $7,000.00 was not deposited into the account of Whitewater Development.

[82] Repayment of loan by Whitewater Development to Tucker-Smith-McDougal. See Check No. 117 from the account of Whitewater Development signed by S. McDougal payable to Tucker-Smith-McDougal for $750.00 (Aug. 28, 1984) (Doc. No. DEK 501479); see also Lyons Report Analysis of Source and Use of Cash (Mar. 18, 1992) (Doc. No. DEK001154).

[83] Loan to Whitewater Development by Jim McDougal. See Check No. 113 from the account of James B. McDougal, Trustee signed by S. McDougal payable to Whitewater Development for $200.00 noting, "Loan" (Oct. 25, 1984); Madison Guaranty Deposit Ticket for Whitewater Development for $200.00 (Oct. 26, 1984) (Doc. No. DEK 501501). This loan was reported in the Lyons Report. See Lyons Report (Doc. No. DEK000084).

[84] Loan to Whitewater Development from Great Southern. See Check No. 121 from the account of Great Southern signed by Susan McDougal payable to Whitewater Development for $650.00 noting "Loan" (Oct. 25. 1984) (Doc. No. 54-17958-00000130); see also Madison Guaranty Deposit Ticket for Whitewater Development for $650.00 noting, "Loan GS Land Co. $650.00" (Oct. 26, 1984) (Doc. No. DEK501501); Lyons Report (Doc. No. DEK001155).

[85] Loan to Whitewater Development from Pembrook Manor. See Check No. 118 from the account of Pembrook Manor, Inc signed by S. McDougal payable to Whitewater Development for $1,700.00 noting, "Loan" (Oct. 25, 1984) (Doc. No. 54-17958-0000132); see

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also Madison Guaranty Deposit Ticket for Whitewater Development for $1,700.00 noting, "Pembrook $1,700.00" (Oct. 26, 1984) (Doc. No. DEK501501).

[86] Loan to Whitewater Development from Tucker-Smith-McDougal. See Check No. 152 from the account Tucker-Smith-McDougal signed by S. McDougal payable to Whitewater Development for $7,500.00 noting, "Loan" (Dec. 26, 1984) (Doc. No. GS-0007546); see also Madison Guaranty Deposit Ticket for Whitewater Development for $7,500.00 noting, "TSM $7,500.00" (Sept. 10, 1984) (Doc. No. GS-00007545).

[87] Loan to Whitewater Development from Smith-McDougal. See Canceled Check No. 204 from the account of Smith-McDougal signed by James B. McDougal payable to Whitewater Development Corp. for $500.00 noting, "Loan" (Oct. 26, 1984); see also Madison Guaranty Deposit Ticket for Whitewater Development for $500.00 noting, "Smith McD. Kingston $500.00" (Oct. 26, 1984) (Doc. No. DEK501519). The Lyons Report included this payment, but mischaracterized its source as being Susan McDougal. See Lyons Report (Doc. No. DEK001155).

[88] Loan to Whitewater Development from Flowerwood Farms. See Check No. 166 from the account of Flowerwood Farms signed by S. McDougal payable to Whitewater Development for $12,000.00 noting "Loan"(Nov. 6, 1984) (Doc. No. 54-1769-000); see also Madison Guaranty Deposit Ticket for Whitewater Development for $12,000.00 noting, "Loan Flowerwood Farms $12,000.00" (Nov. 6, 1984) (Doc. No. DEK 501519); Lyons Report (Doc. No. DEK001155).

[89] Loan to Whitewater Development from Madison Marketing. See Check No. 103 from the account Madison Marketing signed by S. McDougal payable to Whitewater Development for $5,566.39 noting, "Loan" (Nov. 19, 1984) (Doc. No. GS-0007591); see also Madison Guaranty Deposit Ticket for Whitewater Development for $5,566.39 noting, "no. 103 Madison Marketing $5,566.39" (Nov. 19, 1984) (Doc. No. DEK501520); Lyons Report (Doc. No. DEK000084).

[90] Loan to Whitewater Development by Jim McDougal. See Check No. 114 from the account of James B. McDougal, Trustee signed by James B. McDougal payable to Whitewater Development for $280.00 noting, "Loan" (Dec. 6, 1984) (Doc. No. GS-00007605); Madison Guaranty Deposit Ticket for Whitewater Development for $280.00 (Dec. 7, 1984) (Doc. No GS-00007603). This loan was reported in the Lyons Report. See Lyons Report (Doc. No. DEK000084).

[91] Loan to Whitewater Development from Tucker-Smith-McDougal. See Check No. 159 from the account of Tucker-Smith-McDougal signed by James B. McDougal payable to Whitewater Development for $1,600.00 noting, "Loan" (Dec. 6, 1984) (Doc. No.GS-00007605); see also Madison Guaranty Deposit Ticket for Whitewater Development for $1,600.00 noting, "TSM $1,600.00" (Dec. 7, 1984) (Doc. No. GS-00007603); Lyons Report (Doc. No. DEK001155).

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[92] Loan to Whitewater Development from Rolling Manor. See Check No. 198 from the account of Rolling Manor signed by James B. McDougal payable to Whitewater Development for $330.00. The notation is illegible (Dec. 6, 1984) (Doc. No.GS-00007605); see also Madison Guaranty Deposit Ticket for Whitewater Development noting, "Rolling Manor, $330.00" (Dec. 7, 1984) (Doc. No. GS-00007603); Lyons Report (Doc. No. DEK001155).

[93] Loan to Whitewater Development from Pembrook Manor. See Check No.120 from the account of Pembrook Manor, Inc signed by James B. McDougal payable to Whitewater Development for $7,100.00 noting, "Loan" (Dec. 6, 1984) (Doc. No. GS-00007607); see also Madison Guaranty Deposit Ticket for Whitewater Development for $7,100.00 noting, "Pembrook $7,100.00" (Dec. 7, 1984) (Doc. No. GS-00007603); Lyons Report (Doc. No. DEK001155).

[94] Loan to Whitewater Development from Smith-McDougal. See Check No. 207 from the account of Smith-McDougal signed by James B. McDougal payable to White Water Development Corp for $400.00 noting, "Loan"; see also Madison Guaranty Deposit Ticket for Whitewater Development for $400.00 noting, "no. 207 S-McD Kingston $400.00" (Jan. 10, 1985) (Doc. No. DEK 501625). The Lyons Report included this payment, but mischaracterized its source as James B. McDougal (Doc. No. DEK000084).

[95] Loan to Whitewater Development from Flowerwood Farms. See Check No. 172 from the account of Flowerwood Farms signed by James B. McDougal payable to Whitewater Development for $1,430.00 noting, "Loan" (Jan. 9, 1985); see also Madison Guaranty Deposit Ticket for Whitewater Development for $1,430.00 noting, "no. 172 FF $1,430.00" (Jan. 10, 1985) (Doc. No DEK 501625); Lyons Report (Doc. No. DEK001155).

[96] Loan to Whitewater Development from Pembrook Manor. See Check No. 121 from the account of Pembrook Manor, Inc. signed by James B. McDougal payable to Whitewater Development Corp. Inc. for $730.00 noting, "Loan"; see also Whitewater Development Deposit Ticket for Madison Guaranty for $730.00 noting, "# 121 Pembrook $730.00" (Jan. 10, 1985) (Doc. No. DEK501625); Lyons Report (Doc. No. DEK001155).

[97] Loan to Whitewater Development from Rolling Manor. See Check No. 199 from the account of Rolling Manor signed by James B. McDougal payable to Whitewater Development for $1,500.00 noting, "Loan" (Jan. 9, 1985); see also Madison Guaranty Deposit Ticket for Whitewater Development for $1,500.00 noting, "# 199 R.M. $1500.00" (Doc. No. DEK501625); Lyons Report (Doc. No. DEK001155).

[98] Loan to Whitewater Development from Tucker-Smith-McDougal. See Check No. 160 from the account of Tucker-Smith-McDougal signed by James B. McDougal payable to Whitewater Development for $600.00 noting, "loan" (Jan. 1, 1985); see also Madison Guaranty Deposit Ticket for Whitewater Development for $600.00 noting, "#160 TSM $600.00" (Jan. 10, 1985) (Doc. No. DEK 501625); Lyons Report (Doc. No. DEK001155).

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[99] Loan to Whitewater Development from Flowerwood Farms. See Check No. 177 from the account of Flowerwood Farms signed by S. McDougal payable to Whitewater Development for $1,000.00. The notation is illegible (Jan. 28, 1985); see also Madison Guaranty Deposit Ticket for Whitewater Development for $1,000.00 noting, "Flowerwood Farms loan $1,000.00" (Jan. 28, 1985) (Doc. No. DEK 501629); Lyons Report (Doc. No. DEK001155).

[100] Loan to Whitewater Development from Rolling Manor. See Check No. 205 from the account of Rolling Manor signed by S. McDougal payable to Whitewater Development for $1,900.00 (Mar.12, 1985); see also Madison Guaranty deposit ticket for Whitewater Development for $1,900.00 noting, "Rolling M Ck # 205, $1900.00" (Mar. 12, 1985) (Doc. No. DEK 501654); Lyons Report (Doc. No. DEK001155).

[101] Loan to Whitewater Development from Pembrook Manor. See Check No. 123 from the account of Pembrook Manor, Inc. signed by S. McDougal payable to Whitewater Development for $900.00 (Mar. 12, 1985); see also Madison Guaranty Deposit Ticket for Whitewater Development for $900.00 noting, "Loan Pembrook Ck # 123 $900.00" (Mar. 12, 1985) (Doc. No. DEK501652); Lyons Report (Doc. No. DEK001155).

[102] Loan to Whitewater Development from Tucker-Smith-McDougal. See Check No. 165 from the account of Tucker-Smith-McDougal signed by S. McDougal payable to Whitewater Development Corp. for $2,500.00 (Mar. 12, 1985); see also Madison Guaranty deposit ticket for Whitewater Development for $2,500.00 noting, "T.S.McD Ck # 165 Loan no. 2,500.00" (Mar. 12, 1985) (Doc. No. DEK 501653); Lyons Report (Doc. No. DEK001155) (which reported a loan in the amount of $3,000.00).

[103] Loan to Whitewater Development from Smith-Tucker-McDougal. See Check No. 214 from the account of Smith-Tucker-McDougal signed by James B. McDougal payable to Whitewater Development for $500.00 noting, "Loan" (Mar. 12, 1985).

[104] Repayment of apparent nominee loan secured by Wade for McDougal. Based on statements made by Wade, owner of Ozarks Realty Company, and relevant documents, it appeared that McDougal used $25,000.00 in Whitewater funds to repay Wade for a $25,000.00 nominee loan Wade obtained for McDougal from Madison Guaranty on June 16, 1983. See Wade 6/20/95 Int. at 2-3; loan ledger sheet provided by Wade (showing receipt of a $25,000.00 loan on June 16, 1983 from Madison Guaranty with the notation "Jim" that also shows that the loan was repaid on Mar. 22, 1985); Promissory Note dated June 16, 1983 for $25,000.00 loan from Madison Guaranty Savings to Chris V. and Rosalee Wade (Doc. No. 56-00117646); Check No. 137 from the account of Whitewater Development signed by James B. McDougal payable to Ozarks Realty Company for $25,000.00 (Doc. No. DEK002099); Check No. 991 from the account of Chris V. Wade & Associates Ozarks Realty Inc. signed by Rosalee Wade payable to Ozarks Realty Company in the amount of $25,000.00 (Mar. 22, 1985) (Doc. No. 335-00046152).

[105] Loan to Whitewater Development from Flowerwood Farms. See Check No. 194 from the account of Flowerwood Farms signed by James B. McDougal payable to Whitewater Development for $24,455.90 noting, "Loan" (Apr. 9, 1985) (GS-00007668); see also Madison

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Guaranty Deposit Ticket for Whitewater Development for $24,455.90 noting, "00194 James B. McDougal $24,455.90" (Apr. 9, 1985) (Doc. No. DEK002107); Lyons Report (Doc. No. DEK001155).

[106] Repayment of loan by Whitewater Development to Jim McDougal. See Check No.138 from the account of Whitewater Development Corp. signed by S. McDougal payable to James B. McDougal for $30,000.00 noting, "Loan Repayment" (Doc. No DEK002099). This repayment was reported in the Lyons Report; see also Lyons Report (Doc. No. DEK001155).

[107] Loan to Whitewater Development by Jim McDougal made through the direct payment of McDougal's 1985 bonus from Madison Guaranty to Whitewater Development. See Check No.1940 from the account of Madison Financial signed by Greg Young payable to Whitewater Development for $30,000.00 (Apr. 30, 1985) (Doc. No. GS-00007678). This loan was reported in the Lyons Report; see also Lyons Report (Doc. No. DEK001155).

[108] Repayment of loan by Whitewater Development to McDougal. This repayment reflected Ozark Air's purchase of twenty four lots from Whitewater Development in May 1985 for $60,000.00. This was paid by Ozark Air assuming $35,000.00 of the Whitewater acquisition loan at Citizens Bank and by delivery of a Piper Seminole airplane valued at $25,000.00. The airplane was transferred to McDougal, personally and entered on Whitewater Development books as a distribution to McDougal. See Whitewater Development Adjusting Journal Entry No. 3 (May 31, 1986) (Doc. No. DEK000609); Offer and Acceptance (May 17, 1985) (Doc. No. 62-00000003) (setting forth particulars of Ozark Air Services, Inc.'s purchase of Whitewater Development lots); Ozark Realty Co. letter to Whitewater Development (May 4, 1985) (Doc. No. DEK006158). This repayment was reported in the Lyons Report; see also Lyons Report (Doc. No. DEK001155).

[109] Loan to Whitewater Development by McDougal. See Whitewater Development ledger page recording a deposit to Citizens Bank noting "JBM"; mail deposit receipt at Citizens Bank in the amount of $1,500.00 (July 3, 1985) (Doc. No. DEK003964). This loan was reported in the Lyons Report; see also Lyons Report (Doc. No. DEK001155).

[110] Check No. 142 from the account of Whitewater Development signed by James B. McDougal payable to James B. McDougal for $300.00 noting, "loan" (Sept. 24, 1985) (Doc. No. 54-17894-00000178).

[111] Repayment of loan by Whitewater Development to Flowerwood Farms. See Check No. 143 from the account of Whitewater Development signed by James B. McDougal payable to Flowerwood Farms Inc. for $100.00 noting, "Loan" (Oct. 10, 1985); see also Lyons Report (Doc. No. DEK001155).

[112] Loan to Whitewater Development from the account of Madison Marketing. See Madison Marketing check (unnumbered) signed by Susan McDougal payable to Whitewater Development for $7,500.00 noting, "professional fee" (Nov. 8, 1985); see also Madison Guaranty Deposit Ticket for Whitewater Development for $7,500.00 noting, "Madison

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Marketing $7,500.00" (Nov. 8, 1985) (Doc. No. GS-00014523). The Lyons Report erroneously identified James B. McDougal as being the source of $7,000.00 of these funds on May 31, 1986. See Lyons Report (Doc. No. DEK000084). The OIC determined that the $7,000.00 represented a portion of a $7,500.00 loan from Madison Marketing to Whitewater Development. Repayments of $300.00 (Sept. 24, 1985) and $200.00 (Mar. 18, 1986) from Whitewater Development to McDougal were not listed on the general ledger, which led the Independent Counsel to assume that the accountant for Whitewater Development netted the loan and repayments from McDougal in arriving at the $7,000.00; check (unnumbered) from the account of Madison Marketing, signed by Susan McDougal and made payable to Whitewater Development for $7,500.00 noting, "professional fee"; Madison Guaranty Deposit Ticket for Whitewater Development for $7,500.00 noting, "Madison Marketing $7,500.00" (Nov. 8, 1985); Check No. 142 from the account of Whitewater Development signed by James B. McDougal payable to James B. McDougal for $300.00 noting, "loan"(Sept. 24, 1985); Check No. 151 from the account of Whitewater Development signed by James B. McDougal, payable to James B. McDougal for $200.00 (Mar. 17, 1986); Lyons Report (Doc. No. DEK001155).

[113] Repayment of loan by Whitewater Development to Tucker-Smith-McDougal. See Check No.146 from the account of Whitewater Development signed by James B. McDougal payable to Tucker-Smith-McDougal for $400.00 noting, "Loan" (Nov. 19, 1985).

[114] Repayment of loan by Whitewater Development to Tucker-Smith-McDougal. See Check No.147 from the account of Whitewater Development signed by James B. McDougal payable to Tucker-Smith-McDougal for $300.00 noting, "Loan" (Jan. 17, 1986).

[115] Repayment of loan by Whitewater Development to Tucker-Smith-McDougal. See Check No. 148 from the account of Whitewater Development signed by James B. McDougal payable to Tucker-Smith-McDougal for $300.00 noting, "Loan" (Feb. 11, 1986).

[116] Check No. 151 from the account of Whitewater Development signed by James B. McDougal payable to James B. McDougal for $200.00 (Mar. 17, 1986).

[117] During 1986, Whitewater Development's accountant reclassified Adjusting Entry No. 3 and reallocated $17,183.58 of the $25,000.00 payment to McDougal to Madison Marketing, Tucker-Smith-McDougal and Flowerwood Farms. See Adjusting Entry No. 6 prepared by Whitewater Development's accountant to reallocated note payment (Doc. No. DEK001655). This recalculation was reported in the Lyons Report. See Lyons Report (Doc. No. DEK001155).

[118] Repayment of loan by Whitewater Development to Flowerwood Farms. See Whitewater Development Adjusting Entry No. 6 reallocating loan repayment from James B. McDougal to Flowerwood Farms and other McDougal related entities (Doc. No. DEK001655); see also Lyons Report (Doc. No. DEK001155).

[119] Repayment of loan to Whitewater Development from Madison Marketing. See Whitewater Development Adjusting Entry No. 6 which reallocated repayment of loan from

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James B. McDougal to Madison Marketing and other McDougal related entities (Doc. No. DEK001655); see also Lyons Report (Doc. No. DEK001155).

[120] Repayment to Smith-McDougal entered on Whitewater Development books via accountant's year end Adjusting Entry No. 6. See Whitewater Development accountant's Adjusting Entry No. 6 reallocating loan repayment from James B. McDougal to Smith-McDougal and other McDougal related entities (Doc. No. DEK001655). The Lyons Report misidentified "Susan" as the recipient of this payment; see also Lyons Report (Doc. No. DEK001155).

[121] Loan to Whitewater Development from Flowerwood Farms. See Check No. 000252 from the account of Flowerwood Farms signed by James B. McDougal payable to Whitewater Development for $1,000.00 noting, "Loan" (May 29, 1986) (Doc. No. 56-81997-0000224); see also Citizens Bank Deposit Ticket for Whitewater Development for $1,000.00 noting, "Flowerwood $1,000.00" (June 3, 1986) (Doc. No. DEK500431).

[122] Loan to Whitewater Development from Rolling Manor. See Check No. 000258 from the account of Rolling Manor signed by James B. McDougal payable to Whitewater Development for $1,424.00 noting, "Loan" (May 27, 1986); see also Citizens Bank Deposit Ticket for Whitewater Development for $1,424.00 (June 3, 1986) (Doc. No. DEK500431).

[123] Repayment of loan by Whitewater Development to McDougal. See Check No. 154 from the account of Whitewater Development signed by James B. McDougal made payable to James B. McDougal for $600.00 noting, "Loan" (July 7, 1986) (Doc. No. DEK501674).

[124] Repayment of loan by Whitewater Development to McDougal. See Check No. 155 from the account of Whitewater Development signed by James B. McDougal payable to James B. McDougal for $325.00 noting, "Loan" (July 25, 1986) (Doc. No. 501668).

[125] Repayment of loan by Whitewater Development to Flowerwood Farms. See Check No. 156 from the account of Whitewater Development signed by James B. McDougal payable to Flowerwood Farms for $200.00 noting, "Loan" (Aug. 28, 1986) (Doc. No. DEK501692).

[126] McDougal payment on Whitewater Development's acquisition loan at Citizens Bank. See Check No. 122 from the account of James McDougal signed by S. McDougal payable to First Ozark (formerly Citizens Bank) for $2,303.78 (Nov. 6, 1986) (Doc. No. 181-0000856).

[127] Repayment of loan by Whitewater Development to McDougal. See Check No. 159 from the account of Whitewater Development signed by S. McDougal payable to J.B. McDougal for $1,200.00 noting, "Loan" (Doc. No. DEK501683).

[128] Payment made by Rolling Manor on Whitewater Development Acquisition Loan No. 5885 at Citizens Bank. See "Notice of Action Taken" slip noting, "We have charged your account number 2301418 with the following: 'Wire to 1st Ozark National, Attn. Ron Proctor -

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Loan Payment Number 5885 per Susan McDougal, Name Rolling Manor, Amount $397.33" (Dec. 30, 1986).

[129] Loan to Whitewater Development by Flowerwood Farms. On December 30, 1986, Flowerwood Farms wire transferred $1,418.48 to be applied to Whitewater Development Acquisition Loan No. 5885 at Citizens Bank. The total payment made on this loan at that time was $1,189.92. Rolling Manor paid an additional $397.33 on the loan on this same date. The loan was credited with a total payment of $1,819.92. The difference between the two payments actually made and the credit applied on Loan No. 5885 was $4.11. This difference was arbitrarily applied to Flowerwood Farms. See "Notice of Action Taken" slip noting, "We have charged your account...in accordance with the following: "wire to 1st Ozark National attn: Ron Proctor - apply to Loan # 5885 per Susan McDougal, Name Flowerwood Farms" (Dec. 30, 1986); Wire transfer documents for $1,819.92 (Dec. 30, 1986).

[130] Repayment of loan by Whitewater Development to McDougal. See Check No. 161 from the account of Whitewater Development signed by S. McDougal made payable to Jim B. McDougal for $620.80 (Mar. 1, 1987) (Doc. No. DEK501620).

[131] Repayment of loan by Whitewater Development to McDougal. See Unnumbered Check from the account of Whitewater Development signed by Susan McDougal payable to Susan McDougal for $3,477.70 (Sept. 15, 1990) (Doc. No. 70-00116262).

[132] Repayment of loan by Whitewater Development to McDougal. See Check No. 1008 signed by S. McDougal payable to CASH for $1,400.00 noting, "Repay Loan" (Nov. 21, 1990) (Doc. No. 70-00049098).

[133] Repayment of loan by Whitewater Development to McDougal. See Check No. 1016 from the account of Whitewater Development signed by S. McDougal payable to C. Riley for $650.00 noting, "Repay Loan to JB Mc" (Doc. No. 70-00116272).

[134] This check was not deducted as an expense by the Whitewater Development accountant. The notation on the check appears to be erroneous, in view of the treatment of other checks payable to My Paradise, and the nature of the two entities. Accordingly, the OIC treated the payment as a payment on behalf of My Paradise by Whitewater Development. See Canceled Check No. 1021 from the account of Whitewater Development signed by S. McDougal payable to My Paradise for $200.00 noting, "Prof. Services" (Apr. 19, 1991) (Doc. No. 70-00116276).

[135] Check from Whitewater Development payable to CFSB which was endorsed "Paradise." See Check No. 1022 from the account of Whitewater Development signed by S. McDougal payable to CFSB for $500.00 noting, "Deposit" (May 20, 1991) (Doc. No. 70-00116278).

[136] Whitewater Development check endorsed over to McDougal's mother. Rosalee Wade wrote a check to Whitewater Development out of the Earl J. Stafford, Trustee account for payment on lot number 27. This check was endorsed by Whitewater Development over to

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Lorene McDougal, who was James B. McDougal's mother. See Check No. 845 from the account of Earl J. Stafford, Trustee signed by Rosalee Wade payable to Whitewater Development for $5,656.70 noting, "proceeds-WW no. 27" (May 21, 1991) (Doc. No. 335-0002426).

[137] Check from Whitewater Development payable to CFSB which was endorsed "Paradise Inc." See Check No. 1023 from the account of Whitewater Development signed by S. McDougal payable to CFSB for $1,300.00 noting, "Paradise Inc." (May 22, 1991) (Doc. No. 70-00116278).

[138] Check from Whitewater Development payable to My Paradise; the endorsement is not legible. See Check No. 1024 from the account of Whitewater Development signed by S. McDougal payable to My Paradise for $490.00 (June 20, 1991).

[139] Whitewater Development check payable to and endorsed by Lorene McDougal. See Check No. 1025 from the account of Whitewater Development signed by S. McDougal payable to Lorene McDougal for $550.00 noting, "payment" (Doc. No. 828-00000022).

[140] Payment by Whitewater Development of Great Southern's taxes. See Check No. 1027 from the account of Whitewater Development signed by S. McDougal payable to Secretary of State for $296.40 noting, "Great Southern - Taxes" (July 16, 1991) (Doc. No. 70-00116248).

[141] Whitewater Development check payable to VISA noted "Reimbursement C. Riley." Ms. Riley, a long time friend of McDougal, was not a creditor of Whitewater Development. This check was not deducted as a Whitewater Development expense. See Check No. 1029 from the account of Whitewater Development signed by S. McDougal payable to VISA for $532.00 noting, "Reimbursement C. Riley 442812_51 7178 1349" (Doc. No. 70-00116254); see also Claudia Riley 3/10/95 Int. (describing her relationship with McDougal).

[142] Rosalee Wade wrote an Ozark Escrow check to Whitewater Development which was endorsed by Whitewater Development over to Lorene McDougal. See Check No. 1976 from the account of Ozark Escrow signed by Rosalee Wade payable to Whitewater Development for $76.85 noting, "Branson" (Doc. No. 208-0000133).

[143] Wade wrote an Ozark Air check to Whitewater Development which was endorsed by Whitewater Development to Lorene McDougal. See Check No. 19 from the account of Ozark Air signed by C. Wade payable to Whitewater Development for $678.00 noting, "Loan no. 5885." (Doc. No. 335-00028086).

[144] Check from the account of Whitewater Development payable to Paradise, Inc. See Check No. 1032 from the account of Whitewater Development signed by S. McDougal payable to Paradise Inc. for $400.00 noting, "Loan Payment" (Nov. 5, 1991) (Doc. No. 70-00116256).

[145] Check from the account of Ozark Escrow, payable to Whitewater Development and endorsed by Whitewater Development. The check was then endorsed by and deposited into the account of My Paradise (Doc. No. 208-00000136). See Check No. 2172 from the account of

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Ozark Escrow signed by Earl J. Stafford payable to Whitewater Development for $76.85 (Nov. 22, 1991) (Doc. No. 208-00000135).

[146] Check from the account of Ozark Air Services payable to Whitewater Development and endorsed by Whitewater Development. This check was endorsed by and deposited into the account of My Paradise (Doc. No. 335-00028100). See Check No. 21 from the account of Ozark Air Services signed by C. Wade payable to Whitewater Development for $432.00 noting, "# 5885." (Doc. No. 335-00028099).

[147] Check from the account of Ozark Air Services payable to Whitewater Development. This check was endorsed by and deposited into the account of My Paradise, Inc. See Check No. 23 from the account of Ozark Air Services signed by C. Wade payable to Whitewater Development for $924.00 noting, "# 5885" (Dec. 11, 1991) (Doc. No. 335-00028101).

[148] Ozark Escrow check to Whitewater Development for Parker and Brennan lot payments was endorsed to James McDougal. See Check No. 2283 from the account of Ozark Escrow signed by Rosalee Wade payable to Whitewater Development for $247.85 noting, "Parker Brenan" (Doc. No. 208-00000137).

[149] Ozark Escrow check to Whitewater Development for Parker lot payment was endorsed to James B. McDougal. See Check No. 2289 from the account of Ozark Escrow signed by Rosalee Wade payable to Whitewater Development for $173.00 noting, "Parker" (Doc. No. 208-00000139).

[150] Ozark Air check to Whitewater Development for payment on Loan No. 5885 which was endorsed over to McDougal. See Check No. 26 from the account of Ozark Air Services signed by C. Wade payable to Whitewater Development Co. for $678.00 noting, "Note # 5885." (Doc. No. 335-00028108).

[151] Ozark Air check to Whitewater Development for payment on Citizens Bank note no. 5885 which was endorsed over to McDougal. See Check No. 27. from the account of Ozark Air Service, Inc signed by C. Wade payable to Whitewater Development for $246.00 noting, "Loan # 5885" (Feb. 14, 1992) (Doc. No. 335-00028117).

[152] See Check No. 1034 from the account of Whitewater Development signed by Ms. McDougal payable to McDougal for $500.00 noting, "Loan Payment" (Apr. 3, 1992) (Doc. No. 70-00108457).

[153] See Check No.102 from the account of Ozark Air Service, Inc. signed by C. Wade payable to Whitewater Development for $678.00 noting, "Loan no. 5885." This check was endorsed over to McDougal from Whitewater Development (Apr. 6, 1992) (Doc. No. 335-00028130).

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[154] See Check No. 105 from the account of Ozark Air Service signed by C. Wade payable to Whitewater Development Co. Inc. for $678.00 noting, "Loan # 5885"(May 18, 1992) (Doc. No. 335-00028142).

[155] The Lyons Report correctly reported Great Southern as the source of this payment, which was applied to the interest on Whitewater Development's Acquisition Loan No. 5885 at Citizens Bank. It did not report that the Clintons reimbursed Great Southern for this advance via their Check No. 697, in the amount of $10,130.58. See Check No. 697 from the account of Bill Clinton or Hillary Rodham payable to Great Southern Land Co. for $10,130.58 (Dec. 28, 1978) (Doc. No. DEK006616); see also Lyons Report Analysis of Source and Use of Cash (Mar. 18, 1992) (Doc. No. DEK001152).

[156] The Lyons Report correctly reported Great Southern as the source of this payment, which was applied to the interest on Whitewater Development's Loan No. 4197 at Union National. It did not report that the Clintons reimbursed Great Southern for this advance via their Check No. 697 in the amount of $10,130.58. See Check No. 697 from the account of Bill Clinton or Hillary Rodham payable to Great Southern Land Co. for $10,130.58 (Dec. 28, 1978) (Doc. No. DEK006616); see also Lyons Report Analysis of Source and Use of Cash (Mar. 18, 1992) (Doc. No. DEK001152).

[157] The Lyons Report reduced the total of the Great Southern payments to Whitewater Development by $10,130.56. The Clinton check was, however, actually for $10,130.58. See Check No. 697 from the account of Bill Clinton or Hillary Rodham payable to Great Southern Land Company, Inc. for $10,130.58 (Dec. 28, 1978) (Doc. No. DEK006616); see also Lyons Report Analysis of Source and Use of Cash (Mar. 18, 1992) (Doc. No. DEK001152).

[158] The Lyons Report credited Great Southern with this interest payment that, together with an interest payment made on Feb. 5, 1979, totaled $4,602.81. Great Southern actually made payments on the Whitewater Development Acquisition Loan No. 5885 at Citizens Bank of $4,377.68 and $225.13. These payments also total $4,602.81. The Clintons reimbursed Great Southern for the $4,377.68 payment via their Check No. 697 in the amount of $10,130.58. See Check No. 697 from the account of Bill Clinton or Hillary Rodham payable to Great Southern Land Company, Inc. for $10,130.58 (Dec. 28, 1978) (Doc. No. DEK006616). The $225.13 payment was not reimbursed by the Clintons and is included in the Independent Counsel totals for Great Southern. See Citizens Bank Note Due Notice showing a payment of $225.13; Workpaper prepared by Whitewater Development accountant showing that Great Southern made a $225.13 payment; see also Lyons Report Analysis of Source and Use of Cash (Mar. 18, 1992) (Doc. No. DEK001152).

[159] The Lyons Report credited Great Southern with this interest payment that, together with an interest payment made on January 27, 1979, totaled $4,602.81. Great Southern actually made payments on the Whitewater Development Acquisition Loan No. 5885 at Citizens Bank of $4,377.68 and $225.13. These payments also total $4,602.81. The Clintons reimbursed Great Southern for the $4,377.68 payment via their Check No. 697 in the amount of $10,130.58. See Check No. 697 from the account of Bill Clinton or Hillary Rodham payable to Great Southern

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Land Co. for $10,130.58 (Dec. 28, 1978) (Doc. No. DEK006616). The $225.13 payment was not reimbursed by the Clintons and is included in the Independent Counsel totals for Great Southern. See Citizens Bank Note Due Notice showing a payment of $225.13; Workpaper prepared by Whitewater Development accountant showing that Great Southern made a $225.13 payment; see also Lyons Report Analysis of Source and Use of Cash (Mar. 18, 1992) (Doc. No. DEK001152).

[160] This payment was incorrectly included on the Lyons Report Workpaper (Mar. 18, 1992) (Doc. No. DEK001160) as an interest payment on the Whitewater Development Acquisition Loan No. 5885 at Citizens Bank. This payment was excluded from the Lyons Report, Reconstructed Comparative Balance Sheets, Schedule 1, Loans and Advances by McDougals and Clintons, dated March 23, 1992. See Lyons Report Analysis of Source and Use of Cash (Mar. 18, 1992) (Doc. No. DEK001152); Lyons Report Workpaper (Mar. 18, 1992) (Doc. No. DEK 001160); Final Lyons Report, Reconstructed Comparative Balance Sheets, Schedule 1, Loans and Advances by McDougals and Clintons (Mar. 23, 1992) (Doc. No. 863-000000174).

[161] This amount must be added to the Lyons' total for Fiscal Year 1979 to reconcile the Draft and Final Lyons Reports. The Independent Counsel did not find a corresponding expenditure.

[162] This payment was incorrectly included on the Lyons Report Workpaper (Mar. 18, 1992) (Doc. No. DEK001160) as an interest payment on the Whitewater Development Acquisition Loan No. 5885 at Citizens Bank. This payment was excluded from the Lyons Report, Reconstructed Comparative Balance Sheets, Schedule 1, Loans and Advances by McDougals and Clintons, dated March 23, 1992; see also Lyons Report Analysis of Source and Use of Cash (Mar. 18, 1992) (Doc. No. DEK001152); Lyons Report Workpaper (Mar. 18, 1992) (Doc. No. DEK 001160); Final Lyons Report, Reconstructed Comparative Balance Sheets, Schedule 1, Loans and Advances by McDougals and Clintons (Mar. 23, 1992) (Doc. No. 863-000000174).

[163] This payment was incorrectly included on the Lyons Report Workpaper (Mar. 18, 1992) (Doc. No. DEK001160) as an interest payment on the Whitewater Development Acquisition Loan No. 4197 at Union National. This payment was excluded from the Lyons Report, Reconstructed Comparative Balance Sheets, Schedule 1, Loans and Advances by McDougals and Clintons. See Lyons Report Analysis of Source and Use of Cash (Mar. 18, 1992) (Doc. No. DEK001152); Lyons Report Workpaper (Mar. 18, 1992) (Doc. No. DEK 001160); Final Lyons Report, Reconstructed Comparative Balance Sheets, Schedule 1, Loans and Advances by McDougals and Clintons (Mar. 23, 1992) (Doc. No. 863-000000174).

[164] This payment was incorrectly included on the Lyons Report Workpaper dated March. 18, 1992 (Doc. No. DEK001160) as an interest payment on the Whitewater Development Acquisition Loan No. 5885 at Citizens Bank. This payment was excluded from the Lyons Report, Reconstructed Comparative Balance Sheets, Schedule 1, Loans and Advances by McDougals and Clintons, dated March 23, 1992. See Lyons Report Analysis of Source and Use

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of Cash (Mar. 18, 1992) (Doc. No. DEK001152); Lyons Report Workpaper (Mar. 18, 1992) (Doc. No. DEK 001160); Final Lyons Report, Reconstructed Comparative Balance Sheets, Schedule 1, Loans and Advances by McDougals and Clintons (Mar. 23, 1992) (Doc. No. 863-000000174).

[165] Purchase of Whitewater Development stock by Great Southern. See Whitewater Development adjusting entry showing purchase of stock by Great Southern; Union National Deposit Ticket for Whitewater Development for $500.00 (Feb. 21, 1986) (DEK003029); see also Lyons Report Analysis of Source and Use of Cash (Mar. 18, 1992) (Doc. No. DEK001152).

[166] Deposit made in error to Whitewater Development account at Bank of Kingston. These funds were income of Great Southern. The error was discovered by the Whitewater Development accountant and Whitewater Development repaid Great Southern. See Bank of Kingston Deposit Ticket for Whitewater Development for $99.00 noting, "Gross $99.00" (Apr. 20, 1981); Check No. 125 from the account of Whitewater Development signed by Blenda Howard payable to Great Southern for $99.00 (Nov. 6, 1981) (Doc. No. DEK 500598); Whitewater Development checkbook register for Check No.125 noting, "Gross check dep. in error 4/20/81" (Nov. 6, 1981); Lyons Report Analysis of Source and Use of Cash (Mar. 18, 1992) (Doc. No. DEK001153).

[167] This entry reflected a lot payment by Edwina and Ray McCracken on a note receivable sold to Whitewater Development by Arkansas Ventures. This payment was not related to any investment made by the McDougals. See Ozarks Realty Escrow Account Receipt, no. 004024, dated October 30, 1981, which noted $941.33 received from Edwina McCracken for (A.V.) Whitewater Dev."; Bank of Kingston Deposit Ticket for Whitewater Development for $939.33 noting, "A.V. To McCracken, $939.33" (Nov. 3, 1981); see also Lyons Report Analysis of Source and Use of Cash (Mar. 18, 1992) (Doc. No. DEK001153).

[168] The repayment of the deposit was made in error. This error was corrected in the entry dated April 20, 1981. Bank of Kingston Deposit Ticket for Whitewater Development for $99.00 noting, "Gross $99.00"(DEK 500598) (Apr. 20, 1981); see Lyons Report Analysis of Source and Use of Cash (Mar. 18, 1992) (Doc. No. DEK001153).

[169] This entry reflected a Lot payment by Edwina and Ray McCracken on a note receivable sold to Whitewater Development from Arkansas Ventures. This payment was not related to any investment made by the McDougals. See Lyons Report Analysis of Source and Use of Cash (Mar. 18, 1992) (Doc. No. DEK001154).

[170] The Final Lyons Report included this total of three transactions, which the Independent Counsel accounted for separately. The repayments occurred on November 19, 1985 ($400.00); January 17, 1986 ($300.00); and February 11, 1986 ($300.00). See Check No. 146 from the account of Whitewater Development signed by James B. McDougal payable to Tucker-Smith-McDougal for $400.00 (Nov. 19, 1985), Check No. 147 from the account of Whitewater Development signed by James B. McDougal payable to Tucker-Smith-McDougal for $300.00 (Jan. 17, 1986), Check No. 148 from the account of Whitewater Development signed by James

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McDougal payable to Tucker-Smith-McDougal noting, "Loan"(Feb. 11, 1986); see Lyons Report (Doc. No. DEK001155).

[171] The Lyons Report erroneously attributed this payment to James B. McDougal. In actuality, this amount represented a payment by Ozark Air on the $35,000.00 it assumed as part of the purchase price for twenty-four Lots from Whitewater Development in 1985. See Computerized List of Ozark Air's Escrow Pay Schedule (Doc. No. DEK001929); Whitewater Development Statement of Account No. 3175 at Citizens Bank for the month ending Oct. 30, 1985 showing deposit of $1,200.00 (Doc. No. 337-00000468); Document on 1st Ozark letterhead listing all payments made by Ozark Air on Loan No. 5885, including this payment (Doc. No. 337-0000397); see also Lyons Report (Doc. No. DEK001155).

[172] The Final Lyons Report showed that Great Southern received repayment(s) of $10,711.06 at some point between May 31, 1989, and May 31, 1991, because the Great Southern balance decreases by $10,711.06 ($46,397.98 - $35,686.92 = $10,711.06). No explanation for this reduction was given, nor was any reason for this reduction determined. See Final Lyons Report Analysis of Source and Use of Cash (Mar. 18, 1992) (Doc. No. DEK001152); Final Lyons Report (Mar. 23, 1992) (Doc. No. 863-0000179).

[173] The Lyons Report "Reconstructed Comparative Balance Sheets; Schedule 1 - Loans and Advances by McDougals and Clintons," noted "See Accompanying Consultants' Report Dated March 23, 1992," indicated that Whitewater Development repaid McDougal $4,144.98 between May 31, 1989 and May 31, 1991. No explanation for this reduction is given in the report and the amount does not appear on the Lyons Report (Doc. No. DEK001155) (which lists individual amounts included in the totals for the various entities); Final Lyons Report, Reconstructed Comparative Balance Sheets, Schedule 1 (Mar. 23, 1992) (Doc. No. 863-000000179).

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APPENDIX 5

ILLEGAL FINANCIAL TRANSACTIONS UNDERTAKEN BY JIM McDOUGAL INVOLVING WHITEWATER

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I. SEPTEMBER 10, 1984 PAYMENT.

On September 10, 1984, a Tucker-Smith-McDougal check was deposited into the Whitewater corporation account at Madison Guaranty in the amount of $7,500.[1] This deposit was needed to clear an overdraft in the account caused by the payment of $7,500 on September 4, 1984 to the Bank of Cherry Valley, a payment on McDougal's Bank of Cherry Valley loan.[2]

The monies utilized by Tucker-Smith-McDougal to write the $7,500 check to the Whitewater corporation were traced as follows: On September 10, 1984, Tucker-Smith-McDougal received a check for deposit from West Arkansas Construction Company in the amount of $14,690.00.[3] The stated explanation for this check was a payment by R.D. Randolph to McDougal for the prior purchase of land.[4] During several different debriefings by Independent Counsel staff and RTC personnel, Randolph stated that he and McDougal had an arrangement that allowed McDougal to request payment for a previous land sale whenever

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[1] Check from the account of Tucker-Smith-McDougal payable to Whitewater for $7,500.00 (Doc. No. DEK501484); Deposit slip (Doc. No. 54-17954-00000082); see also Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation 71 (Apr. 24, 1995).

[2] Check No. 118 from the account of White Water Development Corporation, Inc. signed by James B. McDougal payable to Bank of Cherry Valley for $7,500.00 (Aug. 28, 1984) (Doc. Nos. GS-00014743 through 744); see also Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation 71 (Apr. 24, 1995).

[3] Check No. 496 from the account of West Arkansas Construction Co. (signature illegible) payable to Tucker-Smith-McDougal for $14,690.00 (Sept. 1, 1984) (Doc. No. 343-00000137); Randolph 5/13/96 Int. at 2.

[4] Randolph 5/13/96 Int. at 2.

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McDougal was in need of money.[5] Randolph also stated that McDougal would provide him with the name of the McDougal entity that Randolph should use as the payee when writing a check.[6]

The monies utilized by West Arkansas Construction Company to make the payment to Tucker-Smith-McDougal were traced to two large deposits made that were made just prior to the West Arkansas Corporation check to Tucker-Smith-McDougal on September 10, 1984.[7] These deposits were both from Madison Financial ($20,545.00 on August 28 and $30,000.00 on August 31) and Randolph believed that these were payments for work performed by West Arkansas Construction on the Maple Creek Farms real estate development project.[8] Randolph acknowledged that McDougal's requests for payments on the land sale roughly coincided with payments from Madison Financial to West Arkansas Construction.[9] Randolph attributed this to the fact that McDougal would have known when Randolph had available cash.

II. OCTOBER 26, 1984 PAYMENT.

On October 26, 1984, a $3,050.00 deposit was made into the Whitewater corporation account at Madison Guaranty.[10] This deposit was comprised of funds from four different

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[5] Randolph recalled that McDougal never "needed a payment because he was in financial trouble or needed to make a payment." Randolph 5/13/96 Int. at 3. But see Randolph 3/9/95 RTC Int. at 36 (stating that he made a payment "whenever [McDougal] needed some money").

[6] Randolph 5/13/96 Int. at 2-3.

[7] Id.

[8] Id. (stating that those checks would most likely have been issued to his company for work that it had preformed on any one of the many real estate transactions).

[9] Id.

[10] Madison Guaranty Deposit Ticket for Whitewater Development for $3050.00 (Oct. 26, 1984) (Doc. No. DEK501501).

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accounts controlled by Jim McDougal. These accounts and deposits were: Great Southern -- $650.00; J.B. McDougal Trustee -- $200.00; Pembrook Manor -- $1,700.00; and Smith-McDougal -- $500.00.[11] The purpose of this deposit was to cure an overdraft in the account that occurred when a loan payment was made to the Security Bank of Paragould on October 4, 1984 in the amount of $4,811.19.[12] This payment reduced the principal owed on the Security Bank note by $2,000.00 to a balance of $18,800.00.[13]

The source of the funds for the Great Southern deposit into the Whitewater Development account were various lot payments from previous Great Southern lot sales over the previous month.[14] The source of the funds for the Pembrook Manor deposit into the Whitewater Development account were payments from previous Pembrook Manor lot sales, and a deposit into the Pembrook Manor account from Quapaw Title, which reflected a lot sale.[15] The source of the funds for the James B. McDougal Trustee deposit into the Whitewater Development account cannot be specifically traced to a single deposit. The source of the funds for the Smith-

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[11] Id.

[12] Check No. 121 from the account of White Water Development Corporation, Inc. signed by James B. McDougal payable to Security Bank for $4811.19 (Oct. 4, 1984) (Doc. No. GS-00014507).

[13] Letter from James B. McDougal to Hillary Rodham (Oct. 4, 1984) (Doc. No. GS-00014506); Security Bank Note Payment Receipt for Bill Clinton for $2,000.00 (Oct. 9, 1984) (Doc. No. GS-00014511).

[14] Deposit ticket for $98.00 (Doc. No. GS-00000728); Deposit Ticket for $116.94 (Doc. No. 54-17950-00000061); Deposit of $237.88 (Doc. No. GS-00000733); Deposit of $123.00 (Doc. No. GS-00000735).

[15] Madison Guaranty Deposit Ticket for Tucker-Smith-McDougal for $101.99 (Oct. 25, 1984) (Doc. Nos. GS-00000894 through 895).

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McDougal deposit into the Whitewater Development account also cannot be traced. It was not drawn on a Madison Guaranty account and bank records no longer exist.

III. NOVEMBER 7, 1984 PAYMENT.

On November 7, 1984, a $12,000.00 deposit, via check from Flowerwood Farms, was made into the Whitewater corporation account.[16] This deposit was in response to a Whitewater Development payment on the principal balance of Citizens Bank Whitewater loan no. 5885.[17] The payment on the loan that preceded this deposit was made on November 1 in the amount of $18,000.00.[18] This amount was combined with $1,200 from the Whitewater Development checking account at Citizens Bank for a total payment of $19,100.00 and reduced the indebtedness to $106,889.34.[19] The $12,000.00 deposit from Flowerwood Farms did not completely eliminate the overdraft on the Whitewater Development account at Madison Guaranty until McDougal made another deposit.[20]

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[16] Madison Guaranty Deposit Ticket for Whitewater Development Corp. for $12,000.00 (Nov. 6, 1984) (Doc. No. DEK501519); see also Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation 77-78 (Apr. 24, 1995).

[17] Check No. 124 from the account of Whitewater Development payable to Citizens Bank for $18,000.00 (Nov. 6, 1984) (Doc. No. DEK501527); see also Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation 77 (Apr. 24, 1995).

[18] Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation 77 (Apr. 24, 1995); Check No. 124 from the account of Whitewater Development payable to Citizens Bank for $18,000.00 (Nov. 6, 1984) (memo section of check denoted "loan payment") (Doc. No. DEK501527).

[19] Payment Slip (undated) (Doc. No. DEK001233).

[20] Madison Guaranty Savings & Loan checking account statement for Whitewater Development Corp. (Nov. 30, 1985) (Doc. No. DEK501517); see also Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A

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IV. NOVEMBER 20, 1984 PAYMENT.

On November 20, 1984, a $5,566.39 deposit was made into the Whitewater corporation account at Citizens Bank with a check from Madison Marketing, a subsidiary of Madison Guaranty.[21] This deposit brought the checking account's balance to within $15.00 of clearing the overdraft status.[22] This deposit, in conjunction with the November 7, 1984 deposit from Flowerwood Farms, replenished the account after the $18,000 Citizens Bank loan payment was made on November 1.[23] The memo section of the check contained the notation "loan" but no additional loan documentation was located.[24]

The source of the funds for the Madison Marketing deposit was traced to the deposits of $25,361.06 from Madison Guaranty and $375.29 from Madison Finance into the Madison Marketing account on November 19, 1984.[25] There did not appear to be any logical justification

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Preliminary Report to the Resolution Trust Corporation 78 (Apr. 24, 1995).

[21] Check No. 104 from the account of Madison Marketing signed by Susan McDougal payable to Lisa Aunspaugh for $1,000.00 (Jan. 24, 1984) (Doc. No. AAP-0002873); Madison Guaranty Deposit Ticket for Whitewater Development Corp. for $5,566.39 (Nov. 19, 1984) (Doc. No. DEK501520); see also Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation 79 (Apr. 24, 1995).

[22] Madison Guaranty Savings & Loan checking account statement for Whitewater Development Corp. (Nov. 30. 1984) (Doc. No. DEK501517).

[23] Madison Guaranty Savings & Loan checking account statement for Whitewater Development Corp. (Nov. 30, 1984) (Doc. No. DEK501517); see also Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation 77 (Apr. 24, 1995).

[24] Check No. 103 from the account of Madison Marketing signed by S. McDougal payable to Whitewater Development for $5,566.39 (Nov. 19, 1984) (Doc. No. GS-00007591).

[25] Madison Guaranty Deposit Ticket for Madison Marketing for $25,736.35 (Nov. 19, 1984) (Doc. No. GS-00019297).

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or reason for the $5,566.39 deposit from Madison Marketing to Whitewater Development as there was no apparent work that was ever performed by Madison Marketing on behalf of Whitewater Development. There is no evidence to suggest that Whitewater Development received advertising assistance of any type from Madison Marketing and there was no evidence that Madison Marketing billed Whitewater Development for any individual advertising work. McDougal stated that the amounts paid to him and Susan McDougal were monies that were owed to them, which reflect the savings that were realized by not utilizing an outside advertising agency.[26]

V. DECEMBER 7, 1984 PAYMENT.

On December 7, 1984, a $9,310.00 deposit into the Whitewater Development account was made with amounts from four McDougal related entities.[27] These accounts and deposits were: Pembrook Manor -- $7,100.00; Tucker-Smith-McDougal -- $1,600.00; Rolling Manor -- $330.00.00; and James B. McDougal Trustee $280.00.[28] The purpose of this deposit was to

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[26] J. McDougal 9/3, 4, 5, 17/96 Ints. at 8; see also Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation 78-79 (Apr. 24, 1995).

[27] Deposit ticket for Whitewater Development in the amount of $9,310.00 (Dec. 7, 1984) (Doc. No. DEK501511); see also Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation 79 (Apr. 24, 1995).

[28] Deposit ticket for Whitewater Development in the amount of $9,310.00 (Dec. 7, 1984) (Doc. No. DEK501511); Check No. 159 from the account of Tucker-Smith-McDougal signed by James B. McDougal payable to Whitewater Development Corp. for $1,600.00 (Dec. 6, 1984), Check No. 114 from the account of James B. McDougal, Trustee payable to Whitewater Development Corp. for $280.00 (Dec. 6, 1984), Check No. 198 from the account of Rolling Manor Inc. signed by James B. McDougal payable to Whitewater Development Corp. for $330.00 (Dec. 6, 1984) (Doc. No. GS-00002081); Check No. 120 from the account of Pembrook Manor Inc. signed by James B. McDougal and payable to Whitewater Development for $7,100.00 (Dec. 6, 1984) (Doc. No. GS-00007607); Check (Doc. No. GS-00001824); see also Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater

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cover two separate bank payments ($6,000 to Citizens Bank on November 29, 1984 and $3,276.18 to the Bank of Cherry Valley on December 10).[29] The deposit covered an overdraft in the account that had existed since the payment of the $6,000 to Citizens Bank.[30]

The source of the funds for the Pembrook Manor deposit into the Whitewater Development account ($7,100.00) was traced to the closing of a Pembrook Manor lot sale at Quapaw title, which resulted in a check being written to Pembrook Manor on December 6, 1984.[31] The source of the funds for the Tucker-Smith-McDougal deposit into the Whitewater Development account was various lot payments from previous Tucker-Smith-McDougal lot sales. The source of the funds for the Rolling Manor deposit into the Whitewater Development account was various lot payments from previous Rolling Manor lot sales. The source of the funds for the James B. McDougal deposit into the Whitewater Development account could not be traced as this was not a Madison Guaranty account and bank records no longer exist.

Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation 79 (Apr. 24, 1995).

[29] Payment (Doc. No. DEK501525); Check No. 127 from the account of White Water Development Corporation, Inc. signed by James B. McDougal payable to Bank of Cherry Valley for $3,276.18 (Dec. 4, 1984) (Doc. No. GS-00014758); see also Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation 79-80 (Apr. 24, 1995).

[30] Madison Bank account statement for Whitewater Development in the amount of $9,310.00 (Dec. 7, 1984) (Doc. No. DEK501508); see also Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation 80 (Apr. 24, 1995).

[31] Deposit ticket for Whitewater Development in the amount of $7,100.00 (Doc. No. 54-17964-00000011); Check Pembrook Manor (Dec. 6, 1984) (Doc. No. GS-00000917); see also Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation 80 (Apr. 24, 1995).

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VI. JANUARY 10, 1985 PAYMENT.

On January 10, 1985, a $4,660 deposit was made into the Whitewater corporation account at Madison Guaranty with funds from five different accounts controlled by McDougal.[32] These accounts and deposits were: Rolling Manor -- $1,500; Flowerwood Farms -- $1,430; Pembrook Manor -- $730.00; Tucker-Smith-McDougal --$600.00; and Smith-McDougal -- $400.00.[33] The purpose of this deposit was to fund the account for a loan payment that was made on January 11 to the Bank of Cherry Valley account in the amount of $5,071.23.[34]

The source of funds for the Rolling Manor, Flowerwood Farms, Pembrook Manor, and Tucker-Smith-McDougal deposits was from various lot sales from the respective real estate ventures. The source of the funds for the Smith-McDougal deposit could not be specifically traced as it was not a Madison Guaranty account and bank records no longer exist.

VII. JANUARY 28, 1985 PAYMENT.

On January 28, 1985, a deposit of $1,000.00 was made from Flowerwood Farms into the Whitewater Development account at Madison Guaranty.[35] This advance occurred on the same

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[32] Madison Guaranty Deposit Ticket for Whitewater Development Corp. for $4,660.00 (Jan. 10, 1985) (Doc. No. DEK501625); see also Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation 80 (Apr. 24, 1995).

[33] Id.

[34] Check No. 128 from the account of White Water Development Corporation, Inc. signed by James B. McDougal payable to Bank of Cherry Valley for $5.071.23 (Jan. 4, 1985) (Doc. Nos. DEK501631 through 632); see also Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation 80-81 (Apr. 24, 1995).

[35] Madison Guaranty Deposit Ticket for White Water Development for $1,000.00 (Jan. 28, 1985) (Doc. No. DEK501629); Whitewater Development Madison Guaranty account statement (Jan. 28, 1985) (Doc. No. DEK501623); see also Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A

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day that $1,000.00 was transferred from the Whitewater Development account at Madison Guaranty to the Whitewater Development account at Citizens Bank.[36] It was then combined with monies from the Whitewater corporation account at Citizens Bank and used for a $2,303.78 payment on the Citizens Bank loan.[37]

The source of the funds used for the deposit was traced to a $28,500.00 deposit into the Flowerwood Farms account from Bill Henley.[38] A review of Henley's accounts revealed that the funds originated with a $46,000.00 check from Madison Real Estate to Bill Henley on January 11.[39] The check to Henley bore an inscription that indicated that the payment was for commissions owed to Henley from his real estate sales efforts from various Madison Real Estate developments.[40]

Preliminary Report to the Resolution Trust Corporation 82 (Apr. 24, 1995).

[36] Citizens Bank Deposit Ticket for Whitewater Development account (Jan. 28, 1985) (Doc. No. DEK005668); Whitewater Development Citizens Bank account statement (Jan. 28, 1985) (Doc. No. DEK501623); see also Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation 81-82 (Apr. 24, 1995).

[37] Citizens Bank account statement for Whitewater Development (Doc. No. DEK005669). The account statement of February 27, 1985 shows that one check was written on February 6, 1985 in the amount of $2,303.78; see also Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation 82 (Apr. 24, 1995).

[38] Deposit ticket for Flowerwood Farms account (Doc. Nos. GS-00000048 through 49); Check from Bill Henley (Doc. No. GS-00000050); see also Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation 82 (Apr. 24, 1995).

[39] Check from Madison Real Estate to Bill Henley (Jan. 11, 1985) (Doc. No. 56-00083123).

[40] Id.

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VIII. MARCH 13, 1985 PAYMENTS.

On March 13, 1985, a $2,500 deposit, via check from Tucker-Smith-McDougal was made to the Whitewater Development account at Madison Guaranty.[41] The check combined with a $3,300.00 deposit from three of McDougal's entities (Rolling Manor -- $1,900; Pembrook Manor -- $900.00; and Smith-Tucker-McDougal -- $500.00) to alleviate an overdraft primarily caused by two checks drawn on the Whitewater Development account.[42] The first of these checks was written on February 28, 1985 and was in the amount of $1,000.00 and was made payable to the Whitewater Citizens Bank account.[43] This deposit was combined with other lot payments and was used by the Citizens Bank account to make a payment on the Citizens Bank loan in the amount of $2,303.78 on March 5.

Additionally, on March 13, a Whitewater Development check was written to Wade in the amount of $3,000.00 and was deposited, by Wade, into his account at Arkansas Federal Savings and Loan ("AFSL"). Wade stated that he could not recall the reason for his receipt of this money from Whitewater Development or McDougal. No bank records were available for AFSL as this

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[41] Madison Guaranty Deposit Ticket for Whitewater Development for $2,500.00 (Mar. 12, 1985) (Doc. No. DEK501653); see also Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation 83 (Apr. 24, 1995).

[42] Whitewater Development Madison Guaranty account statement (Mar. 29, 1985) (Doc. No. DEK501646); the source of the funds for the Rolling Manor and Pembrook Manor deposits were various lot payments from previous lot sales. The source of the funds from the Smith-Tucker-McDougal deposit cannot be traced as this account was not a Madison Guaranty account and no bank records exist to properly trace the origination of the funds.

[43] Check from the account of Whitewater Development Madison Guaranty account to Whitewater Development Citizens Bank account (Doc. No. DEK 501642 through 501643); see also Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation 83 (Apr. 24, 1995).

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institution failed and all records from this time frame were lost in the resulting takeover and transfer of ownership.

The source of the funds used by Tucker-Smith-McDougal to write the check was traced to two Tucker-Smith-McDougal deposits.[44] On January 31, a check from R&F Investments in the amount of $3,936.00 was deposited in the Tucker-Smith-McDougal account at Madison Guaranty on March 11, 1985.[45] A check from First Mortgage, Inc., in the amount of $1,150.00 was also deposited in this same account.[46]

IX. APRIL 9, 1985 FLOW-THROUGH TRANSACTION.

On April 9, 1985, a $24,455.90 deposit was made to the Whitewater Development account at Madison Guaranty with a check drawn on Flowerwood Farms.[47] The memo section of

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[44] Madison Guaranty account statement for Tucker-Smith-McDougal (Jan. 1985) (Doc. No. 054-00138849); Madison Guaranty statement for Tucker-Smith-McDougal (Mar. 1985) (Doc. No. AAP-0010994); see also Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation 84 (Apr. 24, 1995).

[45] Madison Guaranty Deposit Ticket for Tucker-Smith-McDougal for $3,936.00 (Jan. 31, 1985) (Doc. No. GS-00002099); Check No. 322 from the account of R&F Investments signature illegible payable to Tucker-Smith-McDougal for $3,936.00 (Jan. 31, 1985) (Doc. No. 54-17972-00000093); see also Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation 84 (Apr. 24, 1995).

[46] Check No. 5923 from the account of First Mortgage, Inc. (signature illegible) payable to Madison Guaranty Savings & Loan $1,150.00 (Feb. 25, 1985) (Doc. Nos. 54-17983-00000141through 142); see also Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation 84 (Apr. 24, 1995).

[47] Madison Guaranty Deposit Ticket for Whitewater Development for $24,455.90 (Apr. 9, 1985) (Doc. No. DEK002107); (Doc. No. 54-17988-0000014); see also Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation 85 (Apr. 24, 1995).

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the Flowerwood Farm check contained the notation "loan."[48] This deposit served to clear a large overdraft in the Whitewater Development account that had been in existence since April 1, 1985 when a check for $25,000.00, made payable to Ozarks Realty, cleared the Whitewater Development account and caused an overdraft of $24,470.90.[49] The Flowerwood Farms deposit would have given the account a $0.00 balance except for the $15.00 overdraft charge that was assessed on April 1, 1985 with the payment of the Ozarks Realty check.[50] Wade could not explain the reason for Ozark Realty's receipt of the $25,000.00 from Whitewater Development and McDougal.[51] Ozarks Realty, after depositing the Whitewater Development check, wrote a check to Wade for $25,000.00, which was deposited into Wade's personal account.[52]

The source of the funds utilized by Flowerwood Farms to write the check to Whitewater Development originated with a loan that Flowerwood Farms procured from the Stephens Security Bank in the amount of $135,000.00.[53]

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[48] Check No. 194 from the account of Flowerwood Farms, Inc. signed by James B. McDougal payable to White Water Development for $24,455.90 (Apr. 9, 1985) (Doc. No. GS-00007668).

[49] Madison Guaranty Savings & Loan checking account statement for Whitewater Development Corp. (Apr. 30, 1985) (Doc. No. DEK002105); see also Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation 84-85 (Apr. 24, 1995).

[50] Madison Guaranty Savings & Loan checking account statement for Whitewater Development Corp. (Apr. 30, 1985) (Doc. No. DEK002105); Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation 85 (Apr. 24, 1995).

[51] Wade 3/30/95 Int. at 18.

[52] Id.

[53] Loan documents for Stephens Security Bank loan to Flowerwood Farms for $135,000 (Doc. Nos. 54-17988-00000376 through 377); see also Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Preliminary Report

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The loan proceeds from the Stephens Security loan were expended by McDougal in the following fashion: $53,053.41 was paid to 1st Commercial Bank to pay off a commercial loan stemming from the 1983 purchase of real estate; $32,181.99 was paid to Madison Guaranty to make a payment on a commercial loan related to a purchase of real estate in 1984; $24,455.90 was paid to Whitewater Development as described above; $11,763.11 was paid to International Paper as a payment on McDougal's loan with International Paper related to real estate; $9,189.69 was paid to Tucker-Smith-McDougal to make a payment on the 1980 Tucker-Smith-McDougal purchase of property; $1,906.81 was made payable to "Pulaski County Collector Ken Taylor" for unidentified real estate taxes for the years 1983-1984; $1,449.09 was used to purchase a cashiers check which was made out to the Bill Clinton Campaign Fund; $1,000 was made payable to Designer Construction, reason unknown.[54] In summary, Flowerwood Farms spent $130,644.

X. MAY 1, 1985 FLOW-THROUGH TRANSACTION.

On May 1, 1985, a $30,000 deposit was made into the Whitewater Development account utilizing a check from Madison Financial.[55] This deposit corrected an overdraft of $29,744.87 that had been in existence since April 23, 1985 when a Whitewater Development check written to "James B. McDougal" for $30,000 cleared.[56] The memo section of the check had the notation

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to the Resolution Trust Corporation 85 (Apr. 24, 1995).

[54] RTC Crim. Ref. No. C-0004 at 16 (Aug. 31, 1992).

[55] Madison Guaranty slip for Whitewater Development in the amount of $30,000 (May 1, 1985) (Doc. No. DEK002112); Check No. 1940 from Madison Financial signed by Greg Young to Whitewater Development for $30,000 (April 30, 1985) (Doc. Nos. GS-00007678 through 7679); see also Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation 94 (Apr. 24, 1995).

[56] Madison Guaranty Savings & Loan checking account statement for Whitewater Development Corp. (Apr. 30. 1985) (Doc. No. DEK002105); Check No. 137 from the account of

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"loan repayment" and appeared to have been written by Susan McDougal.[57] The McDougals used the $30,000 to purchase a cashier's check, in the same amount, made payable to Earth Movers, which was then deposited into the personal account of former Senator Fulbright.[58] The source of the deposited funds was Madison Financial. On April 30, 1985, Madison Financial issued a check to Whitewater Development in the amount of $30,000.[59] These funds essentially flowed through this account from Madison Financial to the Fulbright account and had no effective bearing on the financial condition of the Whitewater project or the associated debt.[60]

XI. NOVEMBER 8, 1985 PAYMENT.

On November 8, 1985, a $7,500 deposit was made into the Whitewater Development account with funds from the Madison Marketing account at Madison Guaranty.[61] The memo

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White Water Development Corporation, Inc. signed by James B. McDougal payable to Ozarks Realty Co. for $25,000.00 (Mar. 22, 1985) (Doc. No. DEK002099); see also Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation 98 (Apr. 24, 1995).

[57] Check No. 138 from the account of White Water Development Corporation, Inc. signed by James B. McDougal payable to Ozarks Realty Co. for $30,000.00 (Mar. 22, 1985) (Doc. No. DEK002099).

[58] See Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation 98-99 (Apr. 24, 1995).

[59] Check No. 1940 from Madison Financial to Whitewater Development for $30,000 (Apr. 30, 1985) (Doc. No. GS-00007678).

[60] Unnumbered check from the account of Madison Marketing signed by Susan McDougal payable to White Water Development Corp. Inc. for $7,500.00 (Nov. 8, 1985) (Doc. No. AAP-0003358); Deposit Ticket for Whitewater Development for $7,500.00 (Nov. 8, 1985) (Doc. No. 054-01142852); RTC Crim. Ref. No. C-0004 at 14 (Aug. 31, 1992).

[61] Unnumbered check from the account of Madison Marketing signed by Susan McDougal payable to White Water Development Corp. Inc. for $7,500.00 (Nov. 8, 1985) (Doc. Nos. AAP-0003358); Madison Guaranty Deposit Ticket for Whitewater Development for $7,500.00 (Nov. 8, 1985) (Doc. No. 054-01142852); see also Pillsbury Madison & Sutro LLP,

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section of the check stated that the purpose of the check (no. 145) was the payment of a "professional fee."[62] The Whitewater check register also includes a notation of "Madison Marketing 11-8-85" in the section for check no. 145.[63] The register reflected the fact that the check was written to "Security Bank of Paragould" and the notation to Madison Marketing seems to be an explanation of the source of the funds utilized for the payment. This deposit was necessary to fund the Whitewater account in advance of the Security Bank loan payment, which was subsequently made on November 15.[64] This loan payment in the amount of $7,322.42 was made on the loan in the name of "Bill Clinton," which previously was in the name of "Hillary Rodham" at the Bank of Kingston. It reduced the outstanding Security Bank indebtedness to $13,800.00.

The source of the funds utilized for this transfer from Madison Marketing to Whitewater Development could not be specifically traced as the Madison Marketing account had a large balance for the preceding two months.

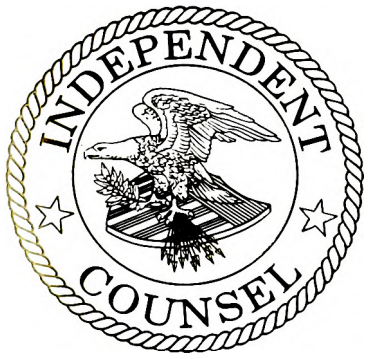
Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation 86-87 (Apr. 24, 1995).

[62] Unnumbered check from the account of Madison Marketing signed by Susan McDougal payable to White Water Development Corp. Inc. for $7,500.00 (Nov. 8, 1985) (Doc. No. AAP-0003358).

[63] Whitewater checkbook register for Check No. 145 for $7,322.42 (Nov. 7, 1985) (Doc. No. GS-00014523).

[64] Check (Nov. 15, 1985) (Doc. No. DEK004958); see also Pillsbury Madison & Sutro LLP, Madison Guaranty Savings & Loan and Whitewater Development Company, Inc.: A Preliminary Report to the Resolution Trust Corporation 86 (Apr. 24, 1995).

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United States Court of Appeals
For the District of Columbia Circuit

Division for the Purpose of
Appointing Independent Counsels
Division No. 94–1

Final Report of the Independent Counsel

In Re: Madison Guaranty Savings & Loan Association

Volume III: Washington, D.C. Investigation

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PART C

WEBSTER L. HUBBELL'S BILLING PRACTICES AND TAX FILINGS

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I. INTRODUCTION

Shortly after their former partner Webster L. Hubbell became Associate Attorney General of the United States in January 1993, Rose Law Firm members in Little Rock found irregularities in Hubbell's billings for 1989-92. In March 1994, regulatory Independent Counsel Robert Fiske, received information that Hubbell may have violated federal criminal laws through his billing activities. Mr. Fiske then opened a criminal investigation. In the wake of these inquiries, Hubbell announced his resignation as the Associate Attorney General on March 14, 1994, saying this would allow him to settle the matter.

Upon his appointment in August 1994, Independent Counsel Starr continued the investigation already started by Mr. Fiske. This resulted in Hubbell pleading guilty to one felony count of mail fraud and one felony count of tax evasion in December 1994, admitting that he defrauded his former partners and clients out of at least $394,000.[1] On June 28, 1995, Judge George Howard sentenced Hubbell to twenty-one months' imprisonment.[2]

Sometime after Hubbell's sentencing, the Independent Counsel learned that a meeting had been held at the White House the day before Hubbell announced his resignation, where Hubbell's problems and resignation were discussed. Senior White House officials, including the President,

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[1] Plea Agreement, United States v. Webster Lee Hubbell, No. 94-241 (E.D. Ark. Dec. 6, 1994). Hubbell's attorney later agreed that Hubbell "obtained $482,410.83 by fraudulent means from the Rose Law Firm and its clients." Pre-sentence Investigation Report (Final Draft), United States v. Webster L. Hubbell, No. 94-241 (E.D. Ark. June 21, 1995); see also Defendant Webster L. Hubbell's Sentencing Memorandum, United States v. Webster L. Hubbell, No. 94-241 (E.D. Ark. June 23, 1995); Response to Draft Pre-sentence Report, United States v. Webster L. Hubbell, No. 94-241 (E.D. Ark. June 19, 1995); Letter from Joel Klingbeil, U.S. Probation Officer, to John W. Nields, Attorney at Law, and Jack Lassiter (June 21, 1995).

[2] Judgment, United States v. Webster L. Hubbell, No. 94-241(1) (E.D. Ark. June 28, 1995).

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the Chief of Staff, and the First Lady attended this meeting. Afterwards, one or more individuals suggested that efforts should be made to help Hubbell find work, and White House Chief of Staff Thomas "Mack" McLarty told Mrs. Clinton: "We're going to be supportive of Webb."[3]

During the eight-months following his resignation, Hubbell secured seventeen employment contracts from supporters of the President. From April 8, 1994, when he left the Justice Department, until the end of the year, Hubbell received approximately $450,010 for consulting fees from fifteen of these clients, but reported only $376,075 on his 1994 federal tax return. Moreover, Hubbell made no tax payments to the IRS relating to his consulting income for 1994. The Independent Counsel also learned that Hubbell did little or no work for the money paid by his consulting clients.

The Independent Counsel began investigating whether the consulting fees had been paid to influence Hubbell's cooperation with the Independent Counsel's ongoing investigation. The Independent Counsel determined there was insufficient evidence to prove any such quid pro quo relating to Hubbell's post-resignation employment, and therefore an insufficient basis to pursue criminal charges against Hubbell or others, such as witness tampering or obstruction of justice.

The Independent Counsel did determine, however, that Webster Hubbell failed to pay a substantial portion of his tax liabilities for 1994 and 1995. Assisted by his wife Suzanna Hubbell, accountant Michael Schaufele, and tax lawyer Charles Owen, Hubbell took steps to conceal this income from the United States, the State of Arkansas, and the District of Columbia during 1994-97.[4]

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[3] McLarty 4/17/97 GJ at 143.

[4] Hubbell also pleaded guilty in June 1999 to one felony count of concealing by scheme material facts about the true nature of his, the Rose Law Firm's and Hillary Rodham

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II. FINDINGS

The Independent Counsel reports the following findings and conclusions.

With respect to Hubbell's Rose Law Firm billings:

- Hubbell defrauded the Rose Law Firm and its clients of approximately $487,000 for expenses and services not performed and concealed his activities from his partners at the Rose Law Firm during 1989-92. He failed to report this amount as income on his federal and state income tax returns, and pleaded guilty in December 1994 to one felony count of tax evasion and one felony count of mail fraud.

With respect to Hubbell's consulting work after he resigned as Associate Attorney General:

Clinton's relationship with Seth Ward, Madison Guaranty Savings & Loan, Madison Financial Corporation and the Castle Grande transaction. See Plea Agreement, United States v. Webster L. Hubbell et al., No. 98-0394 (D.D.C. June 30, 1999).

On April 19, 1999, the Court ordered the United States to produce its witness and exhibit lists to Hubbell's attorneys by April 21. See Order, United States v. Webster L. Hubbell et al., No. 98-0394 (D.D.C. Apr. 19, 1999). On April 21, the government sent Hubbell's attorneys a list of "witnesses we currently anticipate may be called," which included Mrs. Clinton among the sixty-three persons listed. Letter from Jay Apperson, Deputy Independent Counsel, to John W. Nields Jr., Attorney for Webster L. Hubbell (Apr. 21, 1999). On April 30, the Court granted Hubbell's motion to seal the witness list, and to continue the trial date from June 14 to August 2. See Order, United States v. Webster L. Hubbell et al., No. 98-0394 (D.D.C. Apr. 30, 1999). The trial date was later re-set to August 9 at a status conference. See Order Upon Status Hearing, United States v. Webster L. Hubbell et al., No. 98-0394 (D.D.C. May 20, 1999).

On June 3, then-Senior Litigation Counsel Robert Ray, and Associate Independent Counsels Tim Susanin and Eric Dreiband, met with Mrs. Clinton's attorneys, David Kendall and Nicole Seligman, to discuss Mrs. Clinton's availability to testify as a witness at Hubbell's trial. See Letter from David E. Kendall, Attorney for Hillary Rodham Clinton, to Robert W. Ray, Senior Litigation Counsel to the Independent Counsel (June 14, 1999). After the meeting, Mr. Kendall offered to make Mrs. Clinton available to testify on August 23 or August 24. Id. On June 4, Mr. Hubbell's counsel John Nields telephoned Independent Counsel Kenneth Starr and asked for a meeting concerning the indictments pending in Washington, D.C. against his client. On June 8, the meeting occurred between Independent Counsel Starr, Senior Litigation Counsel Ray, and Nields, and plea negotiations were begun. The negotiations were concluded on June 30, 1999, when Hubbell pleaded guilty to one felony count pursuant to 18 U.S.C. § 1001. See Plea Agreement, United States v. Webster L. Hubbell et al., No. 98-0394 (D.D.C. June 30, 1999).

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- Before Hubbell's resignation was announced, White House employees and other supporters of the President discussed helping Hubbell find post-resignation employment.

- Chief of Staff Mack McLarty told First Lady Hillary Rodham Clinton that White House employees and others would "be supportive" of Hubbell.

- As a result of the efforts of Mack McLarty, Erskine Bowles, Truman Arnold, Vernon Jordan, and others, Hubbell was hired as a consultant by seventeen individuals and organizations who were supporters of the President. Hubbell was paid in excess of $500,000 in largely unspecified "consulting fees." The evidence was insufficient to prove these payments were intended to affect Hubbell's cooperation with this Office.

With respect to Hubbell's cooperation with the Office of the Independent Counsel's ongoing investigation after his December 1994 guilty plea:

- The evidence was insufficient to establish beyond a reasonable doubt that Hubbell's lack of substantial assistance to the Office of the Independent Counsel's ongoing investigations was a result of, or because of, an effort to influence, impede, or obstruct the due administration of justice or an effort to induce Hubbell to withhold testimony from an official proceeding in violation of federal criminal statutes.

With respect to Mr. and Mrs. Hubbell's tax liability and their attorney's and accountant's role:

- The Hubbells received over $1 million in income from various sources from 1994-97.

- The Hubbells spent approximately $750,000 on personal expenditures from 1994-97.

- Following the decision of the Supreme Court in United States v. Hubbell, 530 U.S. 27 (2000), insufficient admissible evidence existed to prove beyond a reasonable doubt that the above actions by Hubbell constituted criminal violations of federal tax law.

With respect to Mrs. Clinton:

- Because the evidence was insufficient to prove beyond a reasonable doubt that Hubbell's consulting contracts were intended as a criminal quid pro quo, the evidence was, consequently, insufficient to prove beyond a reasonable doubt that Mrs. Clinton gave false testimony about Webster Hubbell's post-resignation employment and related matters.

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III. FACTUAL SUMMARY

This Part summarizes evidence developed by the Independent Counsel's investigation of Webster L. Hubbell's billing practices at the Rose Law Firm from 1989-92, his 1994-95 employment after he resigned as Associate Attorney General, and his income tax filings for the 1994-97 period.

A. Webster Hubbell Violated Federal Mail Fraud and Tax Laws While a Partner with the Rose Law Firm.

1. After Hubbell Was Appointed Associate Attorney General, Both Civil and Criminal Investigations of His Billing Practices and Tax Filings Commenced.

The Rose Law Firm ("Rose") began investigating former partner Webster L. Hubbell's billings for the 1989-92 period in the Spring of 1993.[5] After discovering some irregularities involving the firm and its clients, Ronald Clark, Rose's managing partner, asked Hubbell to provide back-up documentation.[6] Hubbell said he was too busy.[7]

Over the next months, Rose continued examining the billing discrepancies with Hubbell.[8] At a White House reception on December 19, 1993, James Blair, a personal friend of the President and First Lady, and a former Clinton campaign official from Arkansas, told Hubbell that his former partners at Rose were angry with him.[9] In December 1993, members of the firm

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[5] Clark 11/29/94 GJ at 5.

[6] Clark 3/30/94 GJ at 89.

[7] Clark 11/19/97 GJ at 43.

[8] Clark 12/2/97 GJ at 10-11.

[9] Blair 7/23/97 Senate Whitewater Comm. Depo. at 28.

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met or spoke with Hubbell about the situation, stressing their seriousness.[10] They mentioned possible referral to the Arkansas Board of Professional Responsibility.[11]

Regulatory Independent Counsel Fiske became aware of these matters from a public March 2, 1994 report indicating the Rose firm was investigating its former partner's billing practices.[12] In April 1994, a confidential witness interviewed by Mr. Fiske's Madison Guaranty investigators said Hubbell had overbilled the Federal Deposit Insurance Corporation ("FDIC") and the Resolution Trust Corporation ("RTC") while representing these agencies in a malpractice suit against Frost & Co., a Little Rock accounting firm, who had handled some accounting for Madison Guaranty.[13] Fiske's office reviewed previously subpoenaed materials, conducted approximately fifteen interviews, and concluded "there [were] substantial questions raised regarding Hubbell's billing practices."[14]

Independent Counsel Fiske opened an investigation into Hubbell's billing practices.[15] The investigation focused on whether Hubbell's payment of personal expenses with firm funds violated mail or wire fraud statutes, and whether Hubbell unlawfully failed to report this income

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[10] J. Jones 11/18/97 GJ at 27-29; J. Jones 5/11/94 GJ at 20-22, 33, 38.

[11] J. Jones 11/18/97 GJ at 30; J. Jones 5/11/94 GJ at 32.

[12] Final Report of Robert B. Fiske Jr., Independent Counsel, In re: Madison Guaranty Savings and Loan Association at 41 (D.C. Cir. [Spec. Div.] (Oct. 6, 1994) (under seal)] [hereinafter "Fiske Report"]. On June 30, 1999, Hubbell pleaded guilty to one felony count related to his concealing by scheme material facts from the FDIC. The Plea Agreement is contained in Appendix 1 of this Volume.

[13] Fiske Report, supra note 12, at 41.

[14] Id.

[15] Id.

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in his tax filings.[16]

By August 1994, Mr. Fiske's investigation focused on 400 firm checks Hubbell had signed, or had made payable to others for his benefit, from 1989 through January 1993.[17] Three hundred of those checks, totaling $500,000, were paid to credit card companies and banks where Hubbell had accounts.[18] Hubbell had generally indicated the client to be charged for the expense, and included a brief, work-related description of the basis for his expense.[19]

The credit card documents reviewed by Fiske revealed that Hubbell had paid most of his personal credit card bills, including over $300,000 in personal expenses, using Rose client advance checks from 1989 through January 1993.[20] The evidence suggested that a substantial amount of these personal expenditures had been borne by clients and/or the firm.[21] Some of these checks were to pay credit card charges Hubbell had passed on to the FDIC or the RTC, then clients of the firm.[22]

After the Independent Counsel was appointed in August 1994, the Special Division granted jurisdiction to investigate Hubbell's possible violations of mail or wire fraud statutes, and

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[16] Id. at 41-42.

[17] Id. at 42.

[18] Id. at 42-43.

[19] Id. at 43.

[20] Id.

[21] Id.

[22] Id. Mr. Fiske also reviewed client advance checks that Hubbell had written to non-credit card entities to determine whether the additional personal expenditures were also borne by either the Rose firm's clients or the firm itself. Id.

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various criminal tax statutes.[23] Specifically, the Special Division referred jurisdiction to this Office pursuant to 28 U.S.C. 594(e) over the following:

> [w]hether Webster L. Hubbell, a covered person under 28 U.S.C. § 591 (b), violated any federal criminal law (including mail fraud and criminal tax violations) in his billing or expense practices while a member of the Rose Law Firm.[24]

On November 18, 1994, the Office of the Independent Counsel notified Hubbell that he was a target of a federal criminal investigation.[25] The Independent Counsel concluded, based on the evidence, that Hubbell had charged personal expenses to his personal credit cards and then: 1) allowed the charges to flow through to the client, who repaid the firm; or 2) instructed the firm bookkeepers to write off the charges as firm business expenses. The fraudulent billing and expense practices produced additional income not reported on the Hubbells' state and federal tax returns.

2. Webster Hubbell Pleaded Guilty to Mail Fraud and Tax Evasion in December 1994.

On December 6, 1994, Hubbell waived indictment and pleaded guilty to a felony information filed in the United States District Court for the Eastern District of Arkansas. The

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[23] Order, In re: Madison Guaranty Sav. & Loan Ass'n (Webster L. Hubbell), No. 94-1 (D.C. Cir. [Spec. Div.] Sept. 1, 1994).

[24] Id. The Court's Order also expanded the prosecutorial jurisdiction to include investigation into "whether Webster L. Hubbell, a covered person under 28 U.S.C. § 591(b), violated any federal criminal law (including mail fraud and criminal tax violations) in his billing or expense practices while a member of the Rose Law Firm, and to prosecute all matters arising from that investigation to same extent as all other criminal matters arising under the jurisdiction set forth in the original order." Id. at 1-2.

[25] Letter from Kenneth W. Starr, Independent Counsel, to John Nields, Attorney at Law, advising Nields that his client Webster Hubbell was a target of the federal grand jury investigation (Nov. 18. 1994).

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two count information charged willful tax evasion for 1992 mail fraud for the fraudulent billing of approximately $394,000 between 1989-92, and the failure to declare that money as income for tax purposes.[26] Hubbell promised in his plea agreement to provide the Independent Counsel with "full, complete, accurate and truthful information" about matters relating to matters under investigation.[27] In the ensuing months, Hubbell reviewed his records with attorneys and agents detailed to this Office. Together, they determined that the money taken from the firm and its clients was approximately $482,000.[28] Hubbell also responded to questions during numerous sessions about other aspects of the Independent Counsel's investigation.

On June 28, 1995, Hubbell appeared before U.S. District Court Judge George Howard for sentencing.[29] In his exercise of prosecutorial discretion, the Independent Counsel declined to move for a downward departure for "substantial assistance" as defined under § 5K1.1 of the U.S. Sentencing Guidelines.[30] Under § 5K2.0 of the U.S. Sentencing Guidelines, the court was

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[26] United States v. Webster Hubbell, No. 94-241 (E.D. Ark. 1994). The Plea Agreement and Criminal Information are included as Appendix 1 of this Volume.

[27] Plea Agreement at 6, United States v. Webster Hubbell, No. 94-241 (E.D. Ark. 1994). Twelve page list of Tasks by Jane Sherburne, Special Counsel to the President (Dec. 13, 1995) (Doc. Nos. DF 780643 through 780654); H. Clinton 4/25/98 Depo. at 144-45.

[28] Defendant Webster L. Hubbell's Sentencing Memorandum, United States v. Webster L. Hubbell, No. 94-241 (E.D. Ark. June 23, 1995); see also Presentence Investigation Report (Final Draft), United States v. Webster L. Hubbell, No. 94-241 (E.D. Ark. June 21, 1995); see also Response to Draft Presentence Report, United States v. Webster L. Hubbell, No. 94-241 (E.D. Ark. June 19, 1995); Letter from Joel Klingbeil, U.S. Probation Officer, to John W. Nields, Attorney at Law, and Jack Lassiter (June 21, 1995).

[29] See Tr. of Sentencing Proceedings, United States v. Webster Hubbell, No. 94-241 (E.D. Ark. 1994).

[30] See United States Sentencing Comm., Guidelines Manual, § 5K1.1 (Nov. 1994) ("[u]pon motion of the government stating that the defendant has provided substantial assistance in the investigation or prosecution of another person who has committed an offense, the court

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permitted, on its own initiative, to impose a sentence outside the range established by the guidelines.[31] Hubbell petitioned for a downward departure based on his past community service. The Independent Counsel also noted Hubbell's past community service, evidenced by numerous letters submitted to the Court on Hubbell's behalf, as possible grounds for a downward departure:

> [I]t is clear from this undisputed record that Judge Hubbell has performed substantial service to institutions of importance, at the local level here in Little Rock, through the State of Arkansas and beyond to the national stage as well.
>
> We believe, therefore, that this Court is best situated to determine, in measuring the various services performed by Judge Hubbell, and to determine in light of the traditions of the bar, of the City of Little Rock, of this county, of Pulaski County, of the State of Arkansas and this community, and then viewed in light of eighth circuit standards as to whether there is in fact an atypical case.
>
> In short, Your Honor, we believe that this particular matter is entrusted to the Court's sound discretion as to whether this does in fact constitute an atypical case.
>
> But let me simply close by saying that we have no quarrel at all with the various submissions that have been made by various friends and family members and the like, and I may also, if I may be granted a personal note that the outpouring . . . . from the justice department is an outpouring that I view is not without significance.[32]

The Court noted its careful review of the letters submitted on Hubbell's behalf, but was "not persuaded that there are extraordinary circumstances that would warrant a downward

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may depart from the guidelines").

[31] Specifically, § 5K2.0 states "[u]nder 18 U.S.C. § 3553(b) the sentencing court may impose a sentence outside the range established by the applicable guideline, if the court finds 'that there exists and aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence different from that described.'" United States Sentencing Comm., Guidelines Manual, § 5K2.0 (Nov. 1994).

[32] Tr. of Sentencing Proceedings at 15-16, United States v. Webster Hubbell, No. 94-241 (E.D. Ark. 1994).

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departure."[33] In determining Hubbell's sentence, however, the Court stated:

> [T]he total offense level is 16, the criminal history category is 1, the applicable guideline provisions are a minimum of 21 months to a maximum of 27 months.
>
> Taking into consideration those moving letters that the Court has reviewed, it is the judgment and order of this Court that the defendant be committed to the custody of the Bureau of Prisons where he will serve a term of 21 months on each count, and this will run concurrently.
>
> Following his release, there will be a term of supervised release for a period of three years.[34]

Hubbell was ordered by the Court to pay $135,000 in restitution.[35] Hubbell reported to a federal criminal institution in Cumberland, Maryland on August 7, 1995 to begin his twenty-one month sentence.[36]

On December 13, 1995, Special Counsel to the President Jane Sherburne, assisting the White House legal team, compiled a 12 page list of tasks for herself and other lawyers. On page 9, Ms. Sherburne listed "monitor cooperation" under the heading "Hubbell." Mrs. Clinton later testified that she did not know anything about monitoring Hubbell and had never seen the Sherburne task list prior to being shown it by this Office.[37]

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[33] Id. at 18-19.

[34] Id. at 24.

[35] Id.

[36] Hubbell 12/19/95 GJ at 4; Tr. of Sentencing Proceedings at 28, United States v. Webster Hubbell, No. 94-241 (E.D. Ark. 1994).

[37] H. Clinton 4/25/98 Depo. at 144-46. See Twelve Page List of Tasks by Jane Sherburne, Special Counsel to the President (Dec. 13, 1995) (Doc. No. DF 780651).

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3. Rose's Efforts to Recover its Losses from Webster Hubbell.

During Hubbell's incarceration, the Rose firm continued trying to recover its losses from Hubbell's fraud.[38] Rose sued Hubbell in the United States District Court for the Eastern District of Arkansas, Western Division, seeking $457,410.83.[39] Hubbell, while imprisoned, had monitored conversations with his wife about whether to fight Rose's lawsuit; and to possibly file a countersuit against the firm:

W. Hubbell: Well, honey, I keep telling you, sometimes you have to fight battles alone. You know, you just can't worry about other people. I know what I'm doing, OK? Now if you don't want me to, I won't.

S. Hubbell: No, I want you to. I just want, I'm the one that bears the brunt of this stuff up here. I'm the one who has to try and talk to people, I'm the one that has to try and explain to Marsha [Scott], I'm saying, "Marsha." She said, "You're not going to get any public support for this pursuit if you open up Hillary [Clinton]." Well, by public support I know exactly what she means. I'm not stupid.

W. Hubbell: And I sat there and spent Saturday with you saying I would not do that. I won't, if I raised those allegations, it might open it up to Hillary. And you know that. We talked about that.

S. Hubbell: Yes, but then I get all this back from Marsha who's ratcheting it up and making it sound like, you know, if Webb goes ahead and sues the firm back, then any support I have at the White House is gone.

W. Hubbell: Well.

S. Hubbell: I mean, that's what I'm hearing. I'm hearing the squeeze play.

W. Hubbell: So, I need to roll over one more time.[40]

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[38] Clark 12/2/97 GJ at 17.

[39] Consent Judgment at 3, Rose Law Firm v. Webster Lee Hubbell, No. LR-C-96-212 (E.D. Ark. Oct. 28, 1996).

[40] Cassette Tapes Containing Telephone Conversations of Webster L. Hubbell While Incarcerated at the Federal Correctional Institute, Cumberland, Maryland, 18:39 Call at 12-13 (Tape No. 27.a) (Mar. 25, 1996) (emphasis supplied). "Marsha" referred to Marsha Scott, a

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When questioned about the "roll over one more time" statement, Hubbell stated that he meant he would confess judgment without fighting the lawsuit.[41]

Hubbell settled with Rose in October 1996, agreeing to pay back $300,000.[42] He also agreed that he would pay fifty percent of any annual gross income earned above $100,000, exclusive of taxes, to Rose until the full $300,000 restitution obligation was satisfied.[43]

B. Before Entering into His Plea Agreement, Webster Hubbell Started a Consulting Business Concentrating on Supporters of the President.

1. Hubbell's Contacts with Clinton Administration Members and Prominent Democratic Party Supporters.

The fraudulent billing dispute between Hubbell and Rose became known publicly when, on March 2, 1994, the Washington Post published the first major news article about Hubbell's billing problems.[44] Twelve days later on March 14, Hubbell announced his intent to resign his position as Associate Attorney General.[45]

White House employee and longtime friend of Hubbell. Hubbell 6/29/99 Int. at 13.

[41] Hubbell 6/29/99 Int. at 13.

[42] Consent Judgment, Rose Law Firm v. Webster Lee Hubbell, No. LR-C-96-212 (E.D. Ark. Oct. 28, 1996).

[43] Clark 12/2/97 GJ at 20. Suzanna Hubbell's income from the Department of the Interior was excluded in the calculation of Hubbell's gross income. Consent Judgment at 3, Rose Law Firm v. Webster Lee Hubbell, No. LR-C-96-212 (E.D. Ark. Oct. 28, 1996). Hubbell was released from federal custody on February 12, 1997, having served eighteen months of his sentence. Webb Hubbell, Friends in High Places 323 (1997).

[44] Susan Schmidt, Law Firm Probing Hubbell, Wash. Post, Mar. 2, 1994, at A1; Jeffrey H. Birmbaum & Joe Davidson, Hubbell, Responding to Article, Denies Overbilling Clients at Former Law Firm, Wall St. J., Mar. 3, 1994, at A3; Did Web[b] Hubbell Play Both Sides of Madison?, Newsweek, Mar. 7, 1994, at 32.

[45] John Broder & Ronald Ostrow, Hubbell Quits; Top Justice Aide, Clinton Friend, L.A.

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a. Hubbell's Contacts with Administration and Former Campaign Officials.

Hubbell discussed his pending resignation with Jim Blair and Mickey Kantor the weekend before submitting his resignation letter to the President. Jim Blair, who Hubbell knew was a close friend of the Clintons,[46] telephoned Hubbell and suggested that he resign.[47] Hubbell next telephoned Kantor, former head of the 1992 Clinton Campaign and at that time United States Trade Representative, and told Kantor he had decided to resign.[48] Hubbell says Kantor tried to talk him out of it, but Hubbell thought if he resigned the Rose dispute could be resolved.[49] Kantor later told Hubbell to resign, reasoning that Hubbell could not protect himself against the charges and act as Associate Attorney General.[50]

b. Contact with the President and the First Lady.

Hubbell says he did not have any personal conversations with either President or Mrs. Clinton from March 14 when his resignation letter was submitted to April 8 when he left the Department of Justice.[51] Hubbell attended some White House social functions during this period,

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Times, Apr. 15, 1994, at A1.

[46] Hubbell 6/29/99 Int. at 2.

[47] Id.; Blair 7/23/97 Senate Whitewater Comm. Depo. at 36.

[48] Kantor 12/2/97 GJ at 20-21; Hubbell 6/29/99 Int. at 2.

[49] Hubbell 6/29/99 Int. at 2.

[50] Kantor 12/2/97 GJ at 20-21. Michael Cardozo, an attorney and friend of Hubbell's who later also managed the President's Legal Defense Fund, assisted Hubbell in preparing his resignation letter. Hubbell 6/29/99 Int. at 2. Cardozo later visited Hubbell in prison on November 19, 1995. FCI Cumberland visitors log (Nov. 19, 1995) (Doc. No. LH-0000003).

[51] Hubbell 6/29/99 Int. at 2.

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but says there was not an opportunity to speak with the Clintons.[52]

2. Meetings Were Held in the White House to Discuss Hubbell's Situation before He Resigned.

On March 13, 1994, the day before Hubbell said he would resign as Associate Attorney General, there was a meeting and a "pre-meeting" at the White House to discuss Whitewater-related matters.[53] Mack McLarty said the purpose of the meeting was to discuss an organizational structure to address Whitewater issues with the President and First Lady.[54] The "pre-meeting" was attended by McLarty, White House Deputy Chief of Staff Harold Ickes, and David Kendall and Bob Barnett, the Clintons' personal attorneys.[55] The attendees discussed the agenda for the upcoming meeting.[56]

The full meeting convened later that morning in the White House residence with McLarty, Ickes, Kendall, Barnett, President and Mrs. Clinton, and Mrs. Clinton's Chief of Staff Maggie Williams.[57] After completion of the prepared agenda, the group discussed Hubbell.[58]

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[52] Id. at 2-3.

[53] McLarty 10/1/99 Int. at 1-2. Hubbell stated that he was not aware of a meeting being held in the White House on this day, who may have attended, or when his situation with Rose may have been discussed. Hubbell 6/29/99 Int. at 2.

[54] McLarty 4/17/97 GJ at 13. McLarty recalled a telephone conversation with Mickey Kantor the Saturday before the March 13 meeting where he learned from Kantor the seriousness of the matter and Hubbell's possible exposure. McLarty 10/1/99 Int. at 4. McLarty then spoke with Jim Blair, who confirmed that the dispute between Hubbell and the firm was serious and would not be resolved soon. Id.

[55] McLarty 4/17/97 GJ at 114-15.

[56] Id.

[57] Id. at 14.

[58] Id. at 31-32; see also McLarty's meeting notes (Mar. 13, 1994) (Doc. Nos. 2275-

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McLarty testified:

> [A]nother matter that was topical and pressing in nature was raised at this meeting. And that's how I remember the Webb Hubbell resignation situation or possible resignation being raised at this meeting.[59]

Before the grand jury McLarty refused to testify about the contents of the discussion, stating that he had been ordered to assert executive privilege.[60] He did testify that Hubbell's resignation was discussed:

> [G]iven the fact that there had been apparently discussions with him [Hubbell] by Mr. Kantor and Mr. Blair. . . it seemed to be a growing possibility that he would not be able to continue to effectively serve as associate attorney general. That's how I remember the matter coming up and generally what the tone of the discussion or tone of the matter was.[61]
>
> . . . .
>
> [A]t least the feeling that I had, and I think it was shared certainly by others, that Mr. Hubbell would need to resign . . . closure was not reached about whether or not Mr. Hubbell would be asked to resign . . . if the President felt that was necessary.[62]

According to McLarty, as the meeting was breaking up, he told the First Lady:

> "[W]e're going to try to be supportive of Webb." And her response to me, as I remember it, was, "Thank you, Mack. I appreciate that very much."[63]

McLarty later told this Office that the group's consensus leaned toward Hubbell's resignation,

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00000002 through 7).

[59] McLarty 4/17/97 GJ at 25.

[60] Id. at 25-26. McLarty was later interviewed on October 1, 1999 about the details of the meeting.

[61] Id. at 31.

[62] Id. at 32.

[63] Id. at 35.

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and his comment was only intended as a measure of support if Hubbell resigned.[64] McLarty was uncertain whether he made a similar statement to the President, though he intended to and perhaps did.[65]

Mrs. Clinton testified she did not remember McLarty's comment about being supportive of Hubbell.[66] She testified McLarty could have made the comment, though, and that she believed Hubbell did not deserve to have his friends desert him.[67]

3. Efforts to Help Webster Hubbell Find Post-Administration Employment Resulted in at Least Seventeen Consulting Agreements.

From March until December 1994, White House staff and other supporters of the Democratic Party helped Hubbell transition from the Clinton Administration.[68] Hubbell stated that he did not know whether there was any organized administration effort to assist his transition to private life.[69] He said that he could not say why White House staff wanted to help him, and never asked anyone why they actually did.[70]

After the March 13 meeting, McLarty asked Truman Arnold and Vernon E. Jordan to

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[64] McLarty 10/1/99 Int. at 5. During the interview, McLarty acknowledged that he had been instructed to claim executive privilege before the Little Rock grand jury on April 17, 1997, but proceeded to answer questions about the March 13, 1994 meeting based on his recollection.

[65] McLarty 4/17/97 GJ at 37.

[66] H. Clinton 4/25/98 Depo. at 143.

[67] Id.

[68] Hubbell 6/29/99 Int. at 3.

[69] Hubbell 6/29/99 Int. at 3.

[70] Id. at 10.

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help Hubbell find clients.[71] Arnold was an oil and gas businessman and financial supporter of President Clinton and the Democratic Party.[72] Jordan was then a partner at the law firm of Akin, Gump, Strauss, Hauer & Feld, and also the President's friend and supporter.[73] Arnold hired Hubbell and recommended Hubbell to four others who hired him: John Moores, Wayne Reaud, Bernard Rapoport, and C.W. Conn.[74] Jordan recommended Hubbell to at least one company, Revlon, that eventually hired him.[75]

Hubbell submitted his resignation on March 14, effective April 8, 1994. After resigning, Mack McLarty, and McLarty's Staff Director, William Burton, telephoned Hubbell about once a week, telling him he still had friends in the White House.[76] McLarty and Burton asked Hubbell about areas in which Hubbell had experience.[77] Burton mentioned Truman Arnold and an unnamed energy company as possible clients.[78] Hubbell sent McLarty his resume, presumably at

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[71] McLarty 4/17/97 GJ at 56-57. Hubbell met with Jordan at the Park Hyatt Hotel a day prior to the White House meeting. See Vernon Jordan's calendar (Mar. 12, 1994) (Doc. No. 2277-00000649).

[72] W. Clinton 4/21/00 Campaign Financing Task Force Depo. at 65.

[73] Jordan 3/3/98 GJ at 6, 9-10.

[74] Arnold 5/8/97 GJ at 184.

[75] Jordan 3/3/98 GJ at 73.

[76] Hubbell 6/29/99 Int. at 3. Hubbell claimed no recollection of talking with White House Chief of Staff Mack McLarty prior to making his decision to resign, but agreed that he probably did so. Id. at 2.

[77] Hubbell 6/29/99 Int. at 3-4. During one conversation with McLarty, Hubbell said that he was not going to return to Little Rock but rather was going to seek employment or clients in the Washington, D.C. area. Id. at 3.

[78] Id. at 4. Arnold subsequently retained Hubbell's services.

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Bill Burton's suggestion.[79]

Burton also telephoned Brad Keithley in the Dallas office of Jones Day Reavis & Pogue following a discussion with McLarty about Hubbell.[80] Burton told McLarty that Keithley had been courteous, but said, "it would not work out for Hubbell at Jones, Day, or other traditional law firms for that matter, as long as this billing dispute was outstanding with Rose Law Firm."[81]

Around the same time, Erskine Bowles, then head of the Small Business Administration ("SBA"), spoke with Mickey Kantor, Bowles's friend.[82] Kantor expressed concern for Hubbell's family.[83] Bowles denied that Kantor asked him to do anything, but Bowles decided to try to help Hubbell because "he was a guy who was down."[84] Bowles told Hubbell he would call a few friends with contacts in Washington, D.C.,[85] and called three people, none of whom hired Hubbell.[86]

Hubbell recalled playing golf at Camp David with the President after he left the Justice Department.[87] Afterward, Hubbell said the President asked two questions about Hubbell's

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[79] Id. at 3.

[80] Burton 5/7/97 GJ at 34-35.

[81] McLarty 4/17/97 GJ at 53.

[82] Bowles 4/15/97 GJ at 55.

[83] Id. at 56.

[84] Id. at 57.

[85] Id. at 64-65. During the conversation, Hubbell told Bowles that he was interested in remaining in the D.C. area. Id. at 64.

[86] Id. at 68-72.

[87] Hubbell 6/29/99 Int. at 3.

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problems in Little Rock.[88] The President asked, "Did you ever falsely bill the federal government?"[89] Hubbell said no.[90] Second, the President asked, "Did you ever falsely bill anybody?"[91] Hubbell answered, "Nobody is perfect, but I did not do what they say I have been accused of."[92]

President Clinton also recalled their Camp David conversation:

> Now, when he left the Justice Department, you know, he went to Camp David with me. I took him. He told me that he hadn't done anything wrong, it was just a billing dispute. And that's what he told everybody else and everyone believed him.[93]
>
> . . . . .
>
> [I]t's possible that he told me, well, you know, I'm going to do some business for some various people and he might have mentioned who they were, but I don't have any memory. The only thing I remember about that vacation was that I took a long walk with him and I asked him if he was in trouble. And he said, no, he was having a billing dispute with a law firm and he would resolve it. That's the searing memory I have about that. That's all I remember.[94]

Hubbell said he did not have any other conversations with the President about this matter.[95]

During this same trip, Hubbell also spoke with Mrs. Clinton about the issue.[96] Hubbell

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[88] Id.

[89] Id.

[90] Id.

[91] Id.

[92] Id.

[93] W. Clinton 4/21/00 Campaign Financing Task Force Depo. at 61.

[94] Id. at 67.

[95] Hubbell 6/29/99 Int. at 3.

[96] Id.

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says Mrs. Clinton asked, "Why is the firm doing this to you?"[97] Hubbell said there were people at the firm that hated him.[98] Hubbell says he did not discuss it with Mrs. Clinton again.[99]

4. Hubbell's Consulting Agreements.

Hubbell set up an office on 19th Street N.W. in Washington, D.C. and began his consulting business.[100] Hubbell was hired by at least seventeen supporters of the President, earning income of $450,010 in 1994, reporting only $376,075 on the Hubbells' tax returns.[101] Two other clients -- City of Los Angeles Department of Airports and Sprint Corporation -- hired Hubbell in 1994, but did not pay him until 1995.

President Clinton testified that "there were a lot of people who, you know, at the time this happened, who wanted to help him, who were interested in helping him because they thought he was innocent and that they felt badly for what happened to him."[102] President Clinton also testified that he did not believe he initiated conversations with three of the people who hired Hubbell -- James Riady, Bernard Rapoport, or Truman Arnold.[103]

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[97] Id.

[98] Id.

[99] Id.

[100] Letter from Webb Hubbell to Barry Schwartz, General Counsel of MacAndrews & Forbes, listing his new address as 1215 19th Street Washington, D.C. (Apr. 12, 1994) (Doc. No. HIC 016915).

[101] A chart summarizing the payments made to Hubbell is included as Appendix 2 of this Volume.

[102] W. Clinton 4/21/00 Campaign Financing Task Force Depo. at 66.

[103] Id.

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a. American Income Life (Bernard Rapoport).

In May 1994, either Mickey Kantor or Truman Arnold told Hubbell to contact Bernard Rapoport, Chairman of the Board of American Income Life and a major Democratic Party financial supporter, about employment.[104] Hubbell had met Rapoport, but did not consider him a friend.[105] On Truman Arnold's recommendation, Rapoport hired Hubbell at $3,000 a month for six months.[106] On May 23, 1994, American Income Life paid Hubbell in one payment the agreed upon $18,000.[107]

Hubbell said his work for Rapoport included contacting organizations in Arkansas where

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[104] Hubbell 6/29/99 Int. at 5. President Clinton testified about his friendship with Rapoport before the Campaign Financing Task Force:

> Bernard Rapoport is a guy, we've been friends for almost 30 years. We met in 1972 and we've been friends for 30 years . . . . You know, he's always wanting me to give somebody an appointment, make somebody ambassador, do something else . . . . I consider him a good friend.

W. Clinton 4/21/00 Campaign Financing Task Force Depo. at 64. The President did not recall any conversation with Rapoport about Hubbell, but said Rapoport might have raised the issue of helping Hubbell. Id. at 64. According to the President, Rapoport:

> might have said to me, you know, I think I'm going to help Webb Hubbell, and I might have said to him, that's good. Keep in mind, at the time we all thought, we all of us believed what Webb said, that there was nothing to this [the Rose billing dispute] . . . . But I don't, I don't remember having a specific conversation with anybody, but I know that among the thousand and thousands of conversations I've had in the last eight years, I did talk to B. Rapoport several times a year.

Id. at 64.

[105] Hubbell 6/29/99 Int. at 5.

[106] Id.

[107] American Income Life Checks to Hubbell (May-Dec. 1994) (Doc. Nos. 2144-0000009 through 14).

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American Income Life might sell insurance.[108] Rapoport did not know what work Hubbell did for him.[109] After six months passed, Rapoport did not renew the contract.[110] Rapoport later contributed $5,000 to the Hubbell Children Education Trust Fund.[111]

b. C.W. Conn Industries (Carroll Wayne Conn).

On July 28, 1994, Texas philanthropist Carroll Wayne "C.W." Conn, attended a meeting with Truman Arnold, Wayne Reaud, and Bernard Rapoport at Hubbell's office in Washington, D.C.[112] Hubbell knew Conn was wealthy and had contributed over $100,000 to the Democratic Party.[113] Arnold told the group that Hubbell was no longer with the Justice Department, that Hubbell was "getting set up," and was not a wealthy man, and asked them to give Hubbell some

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[108] Hubbell 6/29/99 Int. at 5.

[109] Rapoport 4/3/97 GJ at 30.

[110] Id. at 57-58. Rapoport testified that if he knew of Hubbell's criminal activity he would not have hired him. Id. at 54.

[111] Id. at 58. In late December 1994 and early January 1995, Hubbell and Michael Schaufele, his accountant, executed three trust agreements to assist the Hubbells in meeting their financial obligations. Schaufele 7/16/97 GJ at 150. All three of these trusts designated Schaufele as trustee. The first trust agreement was executed on December 30, 1994 and was titled the "Webster Hubbell Legal Expense Trust." Id. at 141. The second and third trust agreements were executed on January 19, 1995 and were titled the "Hubbell Children's Education Trust" and the "Hubbell Family Support Trust." Id. at 144. The stated primary purposes of the trusts was to assist Hubbell in meeting the education expenses and related costs for his children, and in meeting the living and support expenses for his wife and children, respectfully. Hubbell Children's Education Trust & Family Support Trust purpose and goals statement (Doc. Nos. MO-00000249-250). Schaufele also opened a non-interest bearing accounts at Metropolitan National Bank in Little Rock for each of the three trusts. Schaufele 7/16/97 GJ at 155.

[112] Conn 4/2/97 GJ at 14-15.

[113] Hubbell 6/29/99 Int. at 6. Conn has contributed approximately $400,000 to the Democratic Party through Truman Arnold since 1992. Conn 4/2/97 GJ at 9.

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business.[114] Hubbell said he hoped not to move his children from the schools they were attending, and agreed he needed financial help.[115] Arnold suggested $18,000 each, and they all wrote checks to Hubbell for that amount.[116]

Hubbell said he provided advice to Conn about obtaining an ambassadorial appointment, something Conn had been after for twenty years.[117] To Conn's knowledge, Hubbell did nothing to help Conn, saying only that he was working on it.[118] Conn said hiring Hubbell was a bad investment, and felt he was duped.[119]

c. Consumer Support and Education Fund (John Phillips).

Shortly after John Phillips moved to Washington, D.C. in 1992, he became friends with Hubbell, who he met through longtime friend Mickey Kantor.[120] Phillips had set up the

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[114] Conn 4/2/97 GJ at 15. Arnold and Rapoport were already clients of Hubbell's. Hubbell 6/29/99 Int. at 6.

[115] Conn 4/2/97 GJ at 15.

[116] Id. at 16. Hubbell believed he was hired by Conn, Moores, Reaud, and Rapoport because of loyalty to Truman Arnold. Hubbell 6/29/99 Int. at 12. Hubbell described it as "kind of like fundraising." Id. Hubbell thought they wanted to help him, though some more than others found ways of using his services. Id. Hubbell felt they were making an "investment in me." Id. Hubbell also said they were loyal Democrats and who simply might have wanted to help another Democrat in need. Id.

[117] Hubbell 6/29/99 Int. at 6; Conn 4/2/97 GJ at 5.

[118] Conn 4/2/97 GJ at 22-23. To date, Conn has not been nominated for an ambassadorship, but did accept an appointment to the Board of Visitors of the United States Military Academy. The appointment was brought to his attention by Bob Nash of the White House Office of Personnel, who told Conn that the position could be a stepping-stone to an ambassadorship. Id. at 24.

[119] Id. at 25-26.

[120] Phillips 2/6/97 GJ at 4, 6; see also Kantor 12/2/97 GJ at 101-02. Kantor testified that he did not know that Phillips had retained Hubbell. Id. at 32.

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Consumer Support and Education Fund ("Consumer Fund"), a non-profit foundation supporting consumer and public interest issues.[121] In a letter dated April 15, 1994, the Consumer Fund made a "Distinguished Public Service Fellowship" grant in the amount of $45,000 to Hubbell to write a series of articles on public service over three months.[122] Hubbell submitted progress reports to the Consumer Fund,[123] saying he had assembled various articles and background materials; begun interviewing people in the Clinton Administration; outlining four articles; and writing a rough draft of one article.[124] None of the outlines or rough drafts were ever sent to the Consumer Fund.[125]

The terms of his fellowship with Consumer Fund required Hubbell to offset the $45,000

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[121] Phillips 2/6/97 GJ at 13-14.

[122] Letter from the Robert S. Wolfe, Chair of the Consumer Support and Education Fund, to Webster Hubbell (Apr. 7, 1994) (Doc. Nos. HIC 017521 through 17523); Letter from Webster Hubbell to Robert S. Wolfe, Chair of the Consumer Support and Education Fund (Apr. 12, 1994) (Doc. Nos. HIC 016942 through 16943); Letter from Robert S. Wolfe, Chair of the Consumer Support and Education Fund to Webster Hubbell (Apr. 15, 1994) (Doc. No. HIC 017524). According to Hubbell's proposal for the articles, one issue he wanted to address was "whether the President's new five year ban on lobbying places new limitations on public service." Letter from Webster Hubbell to the Consumer Fund (Apr. 12, 1994) (Doc. Nos. 2121-00000005 through 6). Hubbell's main points of contact at the Consumer Fund were Phillips and Consumer Fund's Chairman, Robert S. Wolfe. Wolfe 2/6/97 GJ at 11-12. Hubbell assured both Wolfe and Phillips that the dispute with the Rose Law Firm was purely a civil matter. Phillips 2/6/97 GJ at 11, 43; Wolfe 2/6/97 GJ at 33.

[123] Letter from Webster Hubbell to Robert S. Wolfe, Chair of the Consumer Support and Education Fund (May 18, 1994) (Doc. Nos. 2121-00000008 through 9); Letter from Webster Hubbell to Robert S. Wolfe (Sept. 12, 1994) (Doc. Nos. 2121-000000011 through 14).

[124] Letter from Webster Hubbell, to Robert S. Wolfe, Chair of the Consumer Support and Education Fund (May 18, 1994) (Doc. Nos. 2121-00000008 through 9).

[125] Wolfe 2/6/97 GJ at 46-47.

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fellowship with any payments he received for his writing from a publisher.[126] Unknown to the Consumer Fund, Hubbell signed a book contract with Harper Collins in September 1995,[127] submitted several partial manuscripts, and was paid $61,667.[128] Hubbell provided no written work to the Consumer Fund. [129]

Even after Hubbell pleaded guilty in December 1994, the Consumer Fund did not fire him.[130] As late as September 1995, after reporting to prison, Hubbell told the fund he was still working on the articles.[131] Hubbell had not finished by December 1995.[132] Phillips concluded that Hubbell was not going to write the articles, so he personally reimbursed the Consumer Fund the $45,000 paid to Hubbell.[133]

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[126] Phillips 2/6/97 GJ at 51; Wolfe 2/6/97 GJ at 39.

[127] Amendment to original agreement dated Sept. 28, 1995 between Webster Hubbell and Harper Collins Publishers Inc. (May 9, 1996) (Doc. Nos. 2168-00000013 through 25).

[128] Remittance Advice to William Morris Agency and check for $20,000 (May 9 and 15, 1996) (Doc. Nos. 2168-00000003 through 4); Remittance Advice to William Morris Agency and check for $41,667 (Nov. 1 and 8, 1995) (Doc. Nos. 2168-0000006 through 7).

[129] Wolfe 2/6/97 GJ at 65.

[130] Id. at 50-51.

[131] Letter from Webb Hubbell, to Robert S. Wolfe, Chair of the Consumer Support and Education Fund (undated) (Doc. No. 2121-00000015).

[132] Phillips 3/5/98 GJ at 7.

[133] Letter from John R. Phillips, Esq., to Robert S. Wolfe, Chair of the Consumer Support and Education Fund (Dec. 7, 1995) (Doc. No. 2121-00000017); Memo to Tim Geraghty, Principal in the accounting firm of Geraghty & Associates, from John R. Phillips, Esq. with check enclosed in the amount of $45,000 payable to the Consumer Support & Education Fund (Dec. 17, 1995) (Doc. No. 2121-00000038). In February 1996, Hubbell executed a promissory note, secured by his art collection, promising to repay Phillips. See Promissory Note and Security Agreement between WLH and John R. Phillips (Doc. No. 2121-0000043-50).

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During a conversation in mid-August 1996 while Hubbell was in prison, Phillips and Hubbell continued to discuss other employment options.[134] One of those contacted through Phillips, Michael Berman, a long-time Democratic Party political consultant, did not employ Hubbell, but he did make a $5,000 contribution to the Hubbell Education Support Trust, another trust established to support the Hubbell's children.[135]

d. Entrecorp (Ben Barnes).

Ben Barnes, owner and operator of Entrecorp, a Texas company,[136] retained Hubbell on Bernard Rapoport's recommendation for advice about a welfare/social services credit card President Clinton proposed.[137] Barnes wanted to find out why the matter was stalled in a Congressional Subcommittee,[138] because Entrecorp wanted to bid on manufacturing the cards.[139] He paid Hubbell $5,000 on October 25, 1994.[140]

Hubbell later told Barnes that the Vice President's office was handling that project,[141] and

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[134] Cassette Tapes Containing Conversations of Webster L. Hubbell While Incarcerated at the Federal Correctional Institute, Cumberland, Maryland 19:36 Call (Aug. 18, 1996).

[135] Berman 3/21/97 Int. at 4.

[136] Barnes 4/15/97 Int. at 1, 3.

[137] Barnes 4/15/97 Int. at 1.

[138] Id.

[139] Id. at 2.

[140] Id.; Check No. 1523 from the account of Entrecorp payable to Webster Hubbell for $5,000 (Oct. 25, 1994) (Doc. No. 2273-00000022).

[141] Barnes 4/15/97 Int. at 2.

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Barnes made contact with the appropriate person in that office.[142] Barnes felt he received fair value for what he paid Hubbell.[143]

e. Hong Kong China Limited/Lippo Group (James Riady).

Hubbell and James Riady, head of the Indonesian-based Lippo Group and Hong Kong China Limited (a subsidiary), had known each other since the mid-1980s in Arkansas.[144] After Hubbell announced his resignation, he tried to contact Riady about potential employment through Douglas Buford, a Little Rock attorney and former law partner of presidential adviser Bruce Lindsey.[145] Buford testified that Hubbell called him in the spring of 1994 and asked if Lippo -- Buford's new client -- would hire him as a consultant.[146] Buford stated that he passed the message on to Lippo representative John Huang, stressing that the White House was not involved.[147] Huang received a call from either Buford, Mark Grobmyer, or Joe Giroir explaining Hubbell was in trouble and that his family needed help.[148] Huang told Riady of Hubbell's

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[142] Id.

[143] Id.

[144] Hubbell first met James Riady when Riady came to Little Rock to set up an investment group to gain control of Worthen Bank. Hubbell 6/25/99 Int. at 1. In testimony before the Campaign Financing Task Force, President Clinton was uncertain whether he had first met James Riady during a trip to Asia in the fall of 1979, believing that he first met him in Arkansas, after James Riady began work at the bank. W. Clinton 4/21/00 Campaign Financing Task Force Depo. at 9. The President stated that he saw James Riady from time to time during the period that Riady was in Arkansas. The President characterized his relationship with Riady during this period as "casual but friendly." Id. at 12.

[145] Hubbell 6/25/99 Int. at 2.

[146] Buford 10/23/97 Comm. on House Gov't Reform & Oversight Depo. at 28-30.

[147] Id.

[148] Huang 4/23/98 Int. at 3. Huang was interviewed by the OIC after the U.S. District

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problems.[149]

In June 1994, Riady called Hubbell and suggested they meet at the Hay-Adams Hotel in Washington, D.C.[150] Hubbell's calendar records a meeting with Riady at 7:30 a.m. on June 23, 1994.[151] According to Hubbell, he explained his situation and described what he thought he could do for Riady.[152] According to Hubbell, Riady wanted to finalize a one-year agreement with a retainer of $100,000, payable quarterly.[153]

Court for the District of Columbia, Judge Johnson presiding, entered an Order compelling his testimony in accordance with 18 U.S.C. § 6002. Order, In Re: Federal Grand Jury Proceeding, No. 97-2 (D.D.C. Apr. 20, 1998).

[149] Huang 4/23/98 Int. at 3.

[150] Hubbell 6/25/99 Int. at 2. Evidence showed that there was contact during this period between the President, Marsha Scott, Mack McLarty, and Hubbell. A telephone message from Marsha Scott to Mack McLarty dated June 21, 1994 read:

> She's seeing POTUS [President of the United States] at 7 and Webb this evening, so will have more to report tomorrow.

Telephone message from Marsha Scott, Deputy Assistant to the President of the United States, Director of Correspondence and Messages (June 21, 1994) (Doc. No. Z-007566).

[151] Hubbell's calendar (June 23, 1994) (Doc. No. HIC 016569).

[152] Hubbell 6/25/99 Int. at 2.

[153] Id. at 3. On April 15, 1997, this Office informed Earl Silbert, attorney for James Riady, that it desired to speak with Riady. Riady had been out of the United States and has been to date unavailable to respond to questions by this Office. But see, e.g., David S. Cloud, U.S. Moves to Toughen Fund Probe, Wall St. J., Mar. 16, 2000, at A28 (stating "Campaign finance task force chief Robert Conrad is trying to put more legal pressure on James Riady, the Indonesian businessman who is under investigation for allegedly reimbursing employees who contributed to President Clinton's election effort. Mr. Conrad traveled to Jakarta this month to arrange for evidence gathering and questioning of Mr. Riady"); Jay Solomon, Indonesian Regulator Fines Lippo Group, Wall St. J., Aug. 4, 2000, at A9 (stating that "U.S. prosecutors are considering money-laundering and other felony charges against Mr. Riady and are discussing a possible plea agreement with his lawyers. Mr. Riady has denied any wrongdoing in this case").

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In a letter dated June 27, 1994, to David T. Yeh, Director of Hong Kong China Limited (a Lippo/Riady controlled entity based in Hong Kong), Hubbell wrote:

> I am pleased to provide my consultant services to your company. As you know, I provide a broad range of consultant services including extensive expertise in capital markets, U.S. placements, A.D.R. and investments. From our previous dealing, you are also aware that I have extensive legal experience in banking, insurance, corporate organizations and securities.
>
> I am pleased to confirm that I will be providing the full range of my services for a fee of $100,000.00 per year payable in quarterly installments beginning on July 1, 1994 . . . .[154]

That same day, Hong Kong China Limited wired $99,985 into Hubbell's bank account at Nations Bank in Washington, D.C.[155] Hubbell said he was surprised that Riady sent the full amount so soon.[156]

President Clinton was asked about the $100,000 payment from the Lippo Group to Hubbell by the DOJ Campaign Financing Task Force. President Clinton testified that he had no recollection of encouraging Riady to help Hubbell.[157] The President testified it was possible that Hubbell mentioned who he was working for, but said that to the best of his memory he found out about the payment after it was publicly disclosed.[158] The President did not recall having

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[154] Letter from Webb Hubbell to David T. Yeh, Director of Hong Kong China Limited (June 27, 1994) (Doc. No. HIC 016946).

[155] Nations Bank Account Summary for Webster & Suzanna Hubbell (June 17- July 14, 1994) (Doc. Nos. 2073-00000702 through 703).

[156] Hubbell 6/25/99 Int. at 5. According to Hubbell, Giroir later told him that Riady wanted to help Hubbell get his office set up as soon as possible. Hubbell also understood from Riady that he might want to use Hubbell's office space when he was in the Washington, D.C. area. Id.

[157] W. Clinton 4/21/00 Campaign Financing Task Force Depo. at 63.

[158] Id.

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conversations with Hubbell about his employment relationship with Riady.[159] The President denied having any conversations with Riady linking Hubbell's employment and the possibility that Hubbell could be a witness against the President:

> Q. Do you have any memory of a conversation with Riady about paying Hubbell because of concerns that Hubbell might end up being a witness against you in some fashion?
>
> A. Absolutely not. I never talked to anybody about that. I want you to understand two things. Number one, I believe the people that helped Webb Hubbell did it because, like me, they believed he was innocent. Number two; I believe Webb Hubbell was persistently persecuted by the Independent Counsel because he would not lie about me or Hillary. He did not know anything to testify against me or Hillary because, as the RTC report made clear, we did not do anything wrong.[160]

Hubbell said Riady wanted him to come to Indonesia and learn about their operation.[161] Doug Buford was going to Indonesia in August and Riady asked Hubbell to come then.[162] Hubbell could not travel in August, so he and his wife took the trip in September.[163] While traveling to Indonesia, Hubbell had several meetings in a large office building in downtown Hong Kong with the name Lippo prominently displayed.[164] After two days in Hong Kong, the Hubbells traveled on to Jakarta, Indonesia.[165] Hubbell met Mochtar Riady, head of the Riady

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[159] Id. at 67.

[160] Id. at 67-68.

[161] Hubbell 6/25/99 Int. at 3.

[162] Id.

[163] Id.

[164] Id.

[165] Id.

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family business, and the United States Ambassador to Indonesia.[166]

During Hubbell's trip they discussed the upcoming Asian Pacific Economic Conference ("APEC").[167] Riady wanted Hubbell to attend as part of an Arkansas delegation Riady was putting together.[168] Riady told Hubbell to get President Clinton to come and play golf in Bali during APEC.[169] Riady introduced Hubbell to people in Indonesia as his friend, who was a close friend of the President.[170]

According to Mark Middleton, aide to then White House Chief of Staff Mack McLarty, Middleton spoke with Riady in November 1994 during the APEC meeting and Riady said either, "I'm going to help Hubbell," or "I have helped Hubbell."[171] When he returned to the United States, Middleton told Marsha Scott, Deputy Assistant to the President and Director of Correspondence and Messages (and personal friend of Hubbell's), that Riady said he either had or was going to help Hubbell.[172] Middleton thought that Scott was supposed to be some kind of a

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[166] Id.

[167] Id. at 4.

[168] Id. In a letter to Riady, Hubbell wrote: "I would like to discuss with you whether it is in Lippo's best interest for me to be in Indonesia during APEC. I am somewhat concerned about being able to maintain a low profile. I think I may be of better assistance to you behind the scenes. Please give me a call at your earliest convenience to discuss this." Letter from Webb Hubbell to James Riady (Oct. 18, 1994) (Doc. No. HIC 017052).

[169] Hubbell 6/25/99 Int. at 4. Hubbell recalled suggesting to the President at the President's birthday party in 1994 that the President should go to Bali and play golf. Id. at 7.

[170] Id.

[171] Middleton 4/11/97 Int. at 4.

[172] Id.

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coordinator for Hubbell.[173]

Hubbell said neither President nor Mrs. Clinton were aware of his agreement with Riady, unless someone else told them,[174] which he was not aware of.[175] Mrs. Clinton said she first learned about Hubbell's work for Riady sometime during the year before her April 1998 deposition.[176]

After Hubbell's guilty plea, Riady came to Washington, D.C., called Hubbell's office, and set up a meeting.[177] At the meeting Riady was sympathetic and asked if he could help.[178]

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[173] Id. Scott stated that Hubbell never talked to her about what he was going to do at the time of his resignation. Scott 2/4/97 GJ at 80. Scott was not aware if Hubbell had talked to anybody else in the White House or the Executive Office Building during the time prior to his incarceration. Id. at 87. Scott said she probably spoke with Mrs. Clinton in passing about Hubbell's situation but never "talked specifics," and only had generic conversations with the President about Hubbell after he left the Administration. Id. at 67, 76.

[174] Hubbell 6/25/99 Int. at 7. At a White House press conference in December 1996, President Clinton publicly corroborated Hubbell's assertion about his ignorance of the Lippo payments: "I didn't know about it . . . . and I can't imagine who could have ever arranged to do something improper like that and no one around here knows about it . . . . before it happened." William Safire, Essay; Hush Money?, N.Y.Times, Jan. 30, 1997. Compare John Solomon, White House-Asia Money Probed, A.P., Jan. 22, 1997 (quoting White House Press Secretary Mike McCurry: "I pressed very hard at the time inside here, to the point of being obnoxious, to ensure I was being told everything accurate, but apparently I made a mistaken assumption and I'm sorry for that"); Lindsey 6/8/96 Senate Whitewater Comm. Depo. at 107-08 (stating that Lindsey first learned about Hubbell's relationship with the Riadys or Lippo around the time preparations were being made for the October 1994 APEC Conference in Indonesia).

[175] Hubbell 6/25/99 Int. at 7. In testimony before the Senate Whitewater Committee, Hubbell stated that his wife, then Assistant to the Secretary of Interior, was the only person he told about his work for Lippo. Hubbell 6/4/96 Senate Whitewater Comm. Depo. at 123.

[176] H. Clinton 4/25/98 Depo. at 148.

[177] Hubbell 6/25/99 Int. at 4. Hubbell had written a letter to James Riady dated December 12, 1994 in which he stated:

> I look forward someday to visiting with you to discuss what really happened and to hear from me the truth.

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Hubbell told Riady he was worried about his children's education, and that an education trust fund had been set up.[179] Hubbell asked Riady to contribute $25,000, equal to one year's expenses for his daughter at Davidson College.[180] Riady later contributed $12,500 through Joe Giroir, Riady's Arkansas attorney.[181]

In May 1995, Hubbell had dinner with Bernard Rapoport and Mark Middleton, no longer McLarty's aide.[182] Middleton said Hubbell asked if the Riadys "intended to continue to be helpful."[183] Middleton said he did not know and told Hubbell to talk to Huang or Riady himself.[184] Hubbell did not recall asking Middleton whether Riady could send him additional payments; he did recall asking Middleton not to talk to Riady.[185] Hubbell asked Giroir to find out

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Letter from Webb Hubbell to James Riady (Dec. 12, 1994) (Doc. No. HIC 017216). In response, Lippo official Jose Hanna replied via fax dated December 15, 1994:

> [S]orry to hear of what you are going through ... if there is anything at all that we can do from this side just call. We mean it!

Facsimile from Jose Hanna, Lippo Group Official, to Webb Hubbell (Dec. 15, 1994) (Doc. No. HIC 017243).

[178] Hubbell 6/25/99 Int. at 4.

[179] Id.

[180] Id. at 4-5.

[181] Id. at 5.

[182] Middleton 4/11/97 Int. at 4.

[183] Id.

[184] Id.

[185] Hubbell 6/25/99 Int. at 6-7.

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if Riady was going to send the remaining $12,500 for the education fund.[186] Hubbell received a message back that Riady was not going to contribute more money.[187] Hubbell wrote a letter of apology to Riady from prison.[188] Riady never contacted Hubbell directly or indirectly for a return of any part of the money he gave Hubbell.[189]

Hubbell said he did no work for Riady following his December 1994 guilty plea.[190] None of the Lippo-related documents produced by Hubbell showed any substantive work for Lippo.[191] Hubbell remembered that more than once he telephoned Nancy Hernreich at the White House to help various members of the Riady family gain admission to the White House.[192]

When the President was deposed by the DOJ Campaign Financing Task Force, he was asked about the Riadys' "role" in his presidential campaigns. President Clinton thought that

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[186] Id. at 5.

[187] Id.

[188] Id.

[189] Id.

[190] Id. During a telephone conversation from prison, Hubbell agreed with his wife's statement that he had not done any work for Lippo. Cassette Tapes Containing Conversations of Webster L. Hubbell While Incarcerated at the Federal Correctional Institute, Cumberland, Maryland (18:36 Call (Sept. 6, 1996)).

[191] Letter from Keith T. Prothero, Managing Director of Lippo Insurance Group, to Webb Hubbell (Oct. 4, 1994) (Doc. No. HIC 017207); Letter from Webb Hubbell, to Keith Prothero, Managing Director of Lippo Insurance Group (Oct. 18, 1994) (Doc. No. HIC 017051); Letter from Webb Hubbell to Jose Hanna, Lippo Group official, (Dec. 1, 1994) (Doc. No. HIC 017237); Letter from Hubbell to Keith T. Prothero, Managing Director of Lippo Insurance Group (Dec. 19, 1994) (Doc. No. HIC 017215); Facsimile from Keith Prothero, Managing Director of Lippo Insurance Group, to Webb Hubbell (Dec. 20, 1994) (Doc. No. HIC 017217).

[192] Hubbell 6/25/99 Int. at 7.

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Riady supported him in 1992.[193] Hubbell believed Riady was rewarded for his contributions to Hubbell by being able to tell associates all over Southeast Asia he was friends with President Clinton and other high ranking United States officials.[194] Huang did not think that Riady felt the need to make contributions to Hubbell to gain favor with the President due to their personal relationship dating back to their time in Arkansas, though helping Hubbell financially made it more likely that Riady would come to the President's attention and possibly gain him favor in the future.[195]

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[193] W. Clinton 4/21/00 Campaign Finance Task Force Depo. at 18. FEC records report that the Riadys contributed over $450,000 to the Democratic National Committee and various state Democratic parties during the 1992 election cycle. On August 13, 1992, James Riady and his wife contributed $30,000 to the DNC and $10,000 to the California Democratic Party. House Comm. on Gov't Reform & Oversight Report at 166 (Nov. 5, 1998). In September and October of 1992, James & Aileen Riady contributed $410,000 to six other state Democratic Parties. Id. at 167. After the 1996 presidential campaign, press reports surfaced that James Riady had also promised to raise $1 million for the Clinton campaign during a car ride with then-Governor Clinton on August 14, 1992. Walter Shapiro, Hype & Glory: Flunking the character test on first try, USA Today, Nov. 3, 1999; Tom Squitieri, Ex-fundraiser tells of 'gift' payments $38,000 not hush money, Huang says, USA Today, Dec. 16, 1999. When asked, the President stated that he did not specifically recall James Riady pledging $1 million to his campaign. W. Clinton 4/21/00 Campaign Financing Task Force Depo. at 23. President Clinton further testified:

> I know that I saw him [James Riady] in '92 after I became the nominee and I know he said he was going to help us. If he said he was going to give us $1 million, which he might have done, I just don't remember it.
>
> . . . .
>
> But I -- if he did say it, it surprises me that I don't remember because it's the sort of thing you'd remember.

W. Clinton 4/21/00 Campaign Financing Task Force Depo. at 23-24. President Clinton also suggested that Riady might have a better memory of this conversation. Id. at 29, 31.

[194] Hubbell 6/25/99 Int. at 7.

[195] Huang 4/23/98 Int. at 6.

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f. John Moores.

John Moores, the San Diego Padres owner and a Democratic Party supporter, hired Hubbell in July 1994 on Truman Arnold's recommendation.[196] Moores told Hubbell he was always in need of a Washington lawyer, and asked Hubbell about his Rose billing situation.[197] Hubbell's response was vague, acknowledging "problems."[198] Moores said he would not have hired Hubbell if he had known about Hubbell's crimes.[199]

Moores paid Hubbell $18,000 for a six-month contract.[200] Hubbell said they did not discuss the specific purpose of the contract.[201] Moores was developing an airplane hangar project in Monterey County, California,[202] and wanted Hubbell to contact the Federal Aviation Administration ("FAA") about getting approval.[203] Moores also considered having Hubbell help with a real estate project involving property held by the RTC.[204] Moores was not aware of any

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[196] Moores 4/16/97 GJ at 13, 26; Hubbell 6/29/99 Int. at 5.

[197] Hubbell 6/29/99 Int. at 5.

[198] Id.

[199] Moores 4/16/97 GJ at 76.

[200] Letter from Beth Toner, Chief Financial Officer of JMI, to Webb Hubbell (July 20, 1994) (Doc. No. HIC 017228); Check from the account of JMI payable to Webb Hubbell for $18,000 for Legal Retainer (July 20, 1994) (Doc. No. HIC 010944).

[201] Hubbell 6/29/99 Int. at 5.

[202] Moores 4/16/97 GJ at 10-11.

[203] Id. at 41.

[204] Id. at 64-65.

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contacts that Hubbell made at the FAA or RTC on his behalf.[205]

g. Barbara Lindemann.

Barbara Lindemann, a California lawyer active in Democratic politics for thirty years,[206] hired Hubbell to help her obtain a presidential appointment as a judge on the Court of International Trade.[207] Hubbell told Lindemann the billing dispute was private and would be resolved.[208] Lindemann paid Hubbell a single lump sum of $18,000.[209] Lindemann said this also represented payment for some consulting work Hubbell had done on a "major personal family problem."[210]

Lindemann had no reason to think Hubbell did anything to get her a presidential appointment.[211] She spoke with Hubbell several times, and he referred her to Anne Bingaman (head of the Department of Justice Antitrust Division) and Phil Verveer (an attorney with Wilkie, Farr & Gallagher and husband of Melanne Verveer, Deputy Assistant to the President and Deputy Chief of Staff to the First Lady), to garner support for an appointment.[212] Lindemann

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[205] Id. at 65-66, 68-70.

[206] Lindemann 3/4/97 GJ at 2, 7-8; see also Copeland 9/30/97 GJ at 37.

[207] Lindemann 3/4/97 GJ at 22-23.

[208] Id. at 70-71. Lindemann stated that had she known the true nature of Hubbell's personal problems, she would not have hired him. Id. at 107-08.

[209] Id. at 109; Check from the account of Lilyan Lindemann payable to Webster Hubbell for $18,000 (Oct. 9, 1994) (Doc. Nos. 2160-00000028 through 29).

[210] Lindemann 3/4/97 GJ at 37; see also Copeland 9/30/97 GJ at 39.

[211] Lindemann 3/4/97 GJ at 54.

[212] Id. at 44-45.

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knew of no direct contacts Hubbell made for her with anyone in the administration.[213]

h. Mid-America Dairymen.

The Independent Counsel was unable to fully determine the circumstances leading to Hubbell's retention by Mid-America Dairymen ("Mid-America"), a dairy cooperative based in Springfield, Missouri.[214] Hubbell was hired on the recommendation of the cooperative's Washington, D.C. lobbyist Jack L. Williams (who also did lobbying work for Arkansas-based Tyson Foods).[215] Mid-America CEO Gary Hanman retained Hubbell on July 11, 1994.[216] Mid-America paid Hubbell $25,000 between July and December 1994.[217] Hanman authorized payment for "consulting services,"[218] until Hubbell pleaded guilty.[219]

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[213] Id. at 53-54.

[214] Hoecker 4/16/97 Int. at 1.

[215] Williams 12/16/97 GJ at 7. Williams was tried and convicted on charges of making two false statements to government agents related to his representation of Tyson Foods and fined $5,000. United States v. Williams, 29 F. Supp.2d. 1 (D.D.C. 1998). The prosecution of Williams was conducted by Independent Counsel Donald C. Smaltz (In re: Secretary of Agriculture Michael Espy).

[216] Check No. 05249653 from the account of Mid-America Dairymen, Inc. payable to Webster Hubbell for $10,000 (July 11, 1994) (Doc. No. 2148-00000039).

[217] Id.; Check No. 05258969 from the account of Mid-America Dairymen, Inc. payable to Webster Hubbell for $5,000 (Sept. 6, 1994) (Doc. No. 2148-00000044); Check No. 6883275 from the account of Mid-America Dairymen, Inc. payable to Webster Hubbell for $5,000 (Oct. 31, 1994) (Doc. No. 2148-00000048); Check No. 6906518 from the account of Mid-America Dairymen, Inc. payable to Webster Hubbell for $5,000 (Dec. 5, 1994) (Doc. No. 2148-00000052).

[218] Billing Invoice from Webster Hubbell to Mid-America Dairymen Inc. for consulting services (June 10, 1994) (Doc. No. MA-012632).

[219] Check No. 6906518 from the account of Mid-America Dairymen, Inc. payable to Webster Hubbell for $5,000 (Dec. 5, 1994) (Doc. No. 2148-00000052).

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The only known work Hubbell did for Mid-America was on an antitrust issue before the Justice Department in 1994.[220] Wayne Hoecker, a Kansas City lawyer representing Mid-America, consulted with Hubbell about background information on Anne Bingaman, the head of the Department of Justice Antitrust Division.[221] Hubbell gave Hoecker general information on Bingaman, such as "she is a sharp person."[222] Hoecker said none of Hubbell's information was at all useful.[223]

i. Nicholas Stonnington (Merrill Lynch).

Nicholas Stonnington, First Vice President of Merrill Lynch in Los Angeles, hired Hubbell on Barbara Lindemann's recommendation.[224] Stonnington said he retained Hubbell to help obtain a political appointment.[225] Stonnington told Hubbell he was interested in public service and not looking for a particular position.[226] He told Hubbell that the position could be non-paying if it made him known in national political circles and enhanced his business career.[227]

On August 29, 1994, Stonnington paid Hubbell $18,000.[228] Stonnington said he did not

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[220] Williams 12/16/97 GJ at 43-44.

[221] Hoecker 4/16/97 Int. at 2.

[222] Id. at 3.

[223] Id. at 2.

[224] Stonnington 1/30/97 Int. at 1. Stonnington had not met Hubbell prior to Lindemann's recommendation. Id.

[225] Id.

[226] Id.

[227] Id. at 2.

[228] Id. at 2-3; Check No. 310 from the account of Nicholas H. Stonnington payable to

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know at that time about Hubbell's billing fraud or why Hubbell had resigned from the Justice Department.[229] Stonnington knew when he hired Hubbell that Lindemann was also pursuing a political appointment.[230] Stonnington did not obtain an appointment.[231] Stonnington was dissatisfied with Hubbell's work.[232] Stonnington knew of nothing tangible Hubbell did for him.[233]

j. Pacific Telesis.

In the summer of 1994, legislation was pending in Congress concerning long distance service providers.[234] The legislation was stalled in the Senate Commerce Committee, partly due to disagreements between the Department of Justice and the Federal Communications Commission.[235] The "Baby Bell" companies -- including Pacific Telesis -- formed a coalition to try and get the matter resolved.[236] No one in the coalition had a longstanding relationship with

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Webster Hubbell for $18,000 (Aug. 2, 1994) (Doc. Nos. 2156-00000030).

[229] Stonnington 1/30/97 Int. at 2.

[230] Id. at 3.

[231] Id.

[232] Id. at 4.

[233] Stonnington 1/30/97 Int. at 4. Stonnington met with Hubbell on one occasion, possibly in November 1994 when Stonnington was in Washington, D.C. with Lindemann on an unrelated business matter. See Letter from Barbara Lindemann, consulting client of Hubbell, to Webb Hubbell (Aug. 30, 1994) (Doc. No. LIND0010). Hubbell said he was toiling away, but Stonnington was frustrated and wondered whether Hubbell had actually done anything. Stonnington 1/30/97 Int. at 4. Stonnington did not terminate the contract because Hubbell had already been paid. Id.

[234] Stowe 4/16/97 GJ at 7-8; Stowe 3/7/97 Int. at 1.

[235] Stowe 3/7/97 Int. at 1.

[236] Id.

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the Department of Justice, and the coalition wanted to learn why the Department was opposing the bill.[237]

Ronald F. Stowe, Vice President -- Washington Operations of Pacific Telesis, asked lobbyist Jack Williams how to "unstall" the matter at the department.[238] Williams said it was "not his bag," but said Hubbell might help.[239] Williams said Hubbell had recently left the Department and that people there still liked Hubbell.[240]

Williams arranged a meeting with Hubbell and Stowe at Williams's home in Washington, D.C.[241] During the meeting, Stowe explained the issues and that the coalition wanted someone who could find the source of the delay and give advice on how to resolve it.[242] Stowe asked Hubbell if he could help, and whether anything prevented Hubbell's employment by the coalition.[243] Hubbell said he was interested and that there was no legal conflict.[244] Hubbell thought his contacts with the Department of Justice would help.[245] Stowe did not ask Hubbell

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[237] Id.

[238] Id.

[239] Id.

[240] Id.

[241] Id.

[242] Id.

[243] Id.

[244] Id.

[245] Id.

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why he resigned from Justice,[246] and did not know about the criminal investigation.[247] The coalition hired Hubbell on July 15, 1994,[248] and from August 9, 1994 through May 23, 1995, Pacific Telesis paid Hubbell a total of $52,000.[249]

Hubbell's guilty plea was one factor resulting in his termination by Stowe.[250] Stowe thought Hubbell would not have been hired if the full facts of Hubbell's problems were known.[251] Hubbell did not disclose any conflicts of interest,[252] including that Hubbell was working for Pacific Telesis's competitor Sprint Corporation, which Stowe said would have prohibited Hubbell's hiring had it been known.[253]

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[246] Stowe 4/16/97 GJ at 40; Stowe 3/7/97 Int. at 3.

[247] Stowe 3/7/97 Int. at 3. Stowe assumed that Hubbell left the Department so as not to embarrass the President. Id.

[248] Letter from Ronald Stowe, Vice President-Washington Operations of Pacific Telesis, to Webster Hubbell (July 15, 1994) (Doc. No. HIC 016997); Stowe 3/7/97 Int. at 3. Stowe discussed a possible fee amount with Williams and they agreed that $10,000 per month would be appropriate. Id. at 2.

[249] Check No. 27903 from the account of Pacific Telesis payable to Webster Hubbell for $10,000 (Aug. 9, 1994) (Doc. No. 2149-00000044); Check No. 28120 from the account of Pacific Telesis payable to Webster Hubbell for $10,000 (Sept. 13, 1994) (Doc. No. 2149-00000048); Check No. 28284 from the account of Pacific Telesis payable to Webster Hubbell for $10,000 (Oct. 4, 1994) (Doc. No. 2149-00000052); Check No. 28445 from the account of Pacific Telesis payable to Webster Hubbell for $10,000 (Nov. 1, 1994) (Doc. No. 2149-00000057); Check No. 28651 from the account of Pacific Telesis payable to Webster Hubbell for $5,000 (Dec. 6, 1994) (Doc. No. 2149-00000062); Check No. 29728 from the account of Pacific Telesis payable to Webster Hubbell for $7,000 (May 23, 1995) (Doc. No. 2149-00000066).

[250] Stowe 3/7/97 Int. at 4.

[251] Id.

[252] Id.

[253] Id.

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k. Revlon (MacAndrews & Forbes).

After resigning from Justice, Hubbell sought out Vernon Jordan, a Washington, D.C. attorney and close friend of President Clinton.[254] Hubbell first met Jordan following the 1992 election when Jordan served as transition team chairman.[255] Jordan, who was a member of the board of directors of Revlon,[256] discussed possible job opportunities with Hubbell.[257] Jordan told Hubbell to "pick up some clients"[258] and said he knew someone who might hire Hubbell to lobby.[259] Jordan did not divulge the client's name.[260]

Barry Schwartz, General Counsel of MacAndrews & Forbes, Revlon's holding

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[254] Hubbell 6/29/99 Int. at 11.

[255] Id.

[256] Schwartz 5/6/97 GJ at 4.

[257] Jordan 5/5/98 GJ at 205; Hubbell 6/29/99 Int. at 11; Mrs. Clinton learned about the efforts Jordan took on Hubbell's behalf, but could not recall when. H. Clinton 4/25/98 Depo. at 148.

[258] Hubbell 6/29/99 Int. at 11.

[259] Id.

[260] Id. In January 1998, the OIC received information alleging similar conduct by Jordan in connection with the employment search for another then- Administration employee, Monica Lewinsky. Based in part upon the similarity in conduct, the Office sought a referral of the investigation relating to Ms. Lewinsky from the Attorney General. On January 16, 1998, at the request of the Attorney General, the Special Division expanded the jurisdiction of this Office to include authority "to investigate whether Monica Lewinsky or others suborned perjury, obstructed justice, intimidated witnesses, or otherwise violated federal law . . . in dealing with witnesses, potential witnesses, attorneys, or others concerning the civil case Jones v. Clinton." See Order, In re: Madison Guaranty Sav. & Loan Ass'n, (D.C. Cir. [Spec. Div.] Jan. 16, 1998). This Office will file a separate final report relating to this expansion of jurisdiction upon completion of its investigation into that matter.

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company,[261] testified that in April 1994, Jordan recommended Hubbell to him.[262] Schwartz spoke with two other MacAndrews & Forbes employees -- Howard Gittes and Richard Halprin -- about the possibility of hiring Hubbell.[263] During an April 29, 1994 interview in New York arranged by Schwartz,[264] Hubbell met with Howard Gittes, Ronald Perelman, and possibly one other person.[265] Either Gittes or Perelman explained MacAndrews & Forbes' corporate hierarchy, and asked what Hubbell could do for the company.[266] They discussed Hubbell's restrictions, but not money.[267] Hubbell said there was nothing about his personal situation that might embarrass MacAndrews & Forbes.[268]

Revlon soon retained Hubbell at $25,000 per quarter.[269] Schwartz could not describe the work Hubbell was supposed to do.[270] Revlon paid Hubbell $25,000 on April 28, 1994, and again on July 2, 1994.[271] Schwartz testified that in late October or early November 1994, MacAndrews

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[261] Schwartz 5/6/97 GJ at 4; Schwartz 3/6/97 Int. at 1.

[262] Schwartz 5/6/97 GJ at 6.

[263] Id. at 10-11, 15, 17-20; Gittes 4/23/98 Senate Whitewater Comm. Depo. at 27.

[264] Schwartz 5/6/97 GJ at 17-19.

[265] Hubbell 6/29/99 Int. at 11. According to Schwartz, Perelman was not at the meeting -- only Hubbell, Halperin, and Schwartz attended. See Schwartz 5/6/97 GJ at 19.

[266] Hubbell 6/29/99 Int. at 11.

[267] Id.

[268] Schwartz 5/6/97 GJ at 25.

[269] Id. at 28.

[270] Id. at 30-31.

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& Forbes consulted Hubbell on one legal matter[272] that did not result in any written work product.[273]

Around December 2, 1994, Hubbell called Schwartz to say he was pleading guilty.[274] Schwartz was surprised because he had not known Hubbell was facing criminal charges.[275] Schwartz fired Hubbell on December 12, 1994, because the guilty plea made it "obvious" that he could no longer work for MacAndrews & Forbes.[276] Hubbell was paid a final $12,775, the pro rata amount from Hubbell's October 28, 1994 invoice, until December 2, 1994, when Hubbell told MacAndrews & Forbes he was pleading guilty to fraud charges.[277]

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[271] Billing Statement from Webster Hubbell to MacAndrews & Forbes Holdings, Inc. for the period of Apr. 15, 1994 to July 15, 1994 (Apr. 14, 1994) (Doc. No. 2151-00000005); Check and Deposit slip from the account of Revlon payable to Webster Hubbell for $25,000 (Apr. 28, 1994) (Doc. No. HIC-017539); Billing Statement from Webster Hubbell to MacAndrews & Forbes Holdings, Inc. for the period of July 15, 1994 to Oct. 15, 1994 (July 15, 1994) (Doc. No. 2151-00000010); Check No. 29728 from the account of Revlon payable to Webster Hubbell for $25,000 (July 22, 1994) (Doc. No. 2151-00000008).

[272] Schwartz 3/6/97 Int. at 2. Schwartz refused to answer questions about the substance of the matter based on attorney client privilege.

[273] Schwartz 3/6/97 Int. at 2. Hubbell stated, however, that he tried to introduce MacAndrews & Forbes to John Moores, another client, in order to discuss a property deal. Hubbell 6/29/99 Int. at 12.

[274] Schwartz 5/6/97 GJ at 51.

[275] Id. at 58.

[276] Id. at 76-77; Letter from Barry Schwartz, Exec. Vice President and General Counsel for MacAndrews & Forbes, to Webster Hubbell (Dec. 12, 1994) (Doc. No. 2151-00000022); Check No. 38248 from the account of Revlon payable to Webster Hubbell for $12,775) (Dec. 12, 1994) (Doc. No. 2151-00000013).

[277] Schwartz 5/6/97 GJ at 76.

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l. SunAmerica (Eli Broad).

Eli Broad, owner of Los Angeles-based insurance and investment concern SunAmerica Inc., had known Hubbell since the mid-1980s.[278] Broad had maintained periodic contact with Hubbell since, but[279] did not remember any contact while Hubbell was at the Justice Department.[280]

Broad learned of Hubbell's consulting business around April 14, 1994, while attending a dinner where Mrs. Clinton was guest of honor.[281] Broad spoke briefly with Mrs. Clinton and asked about Hubbell.[282] Mrs. Clinton told Broad that Hubbell was doing consulting work in the Washington, D.C. area.[283] Either Broad told Mrs. Clinton he was going to call Hubbell or Mrs. Clinton suggested it.[284]

Broad called Hubbell[285] and spoke with him about employment.[286] They later met in

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[278] See Hubbell 6/29/99 Int. at 6; Broad 1/17/97 Int. at 1. Broad was introduced to Hubbell and the Rose Law Firm by Mickey Kantor. Hubbell did legal work in Little Rock for SunAmerica in 1985 and 1986. Hubbell 6/29/99 Int. at 6; Broad 1/17/97 Int. at 1.

[279] Broad 1/17/97 Int. at 1.

[280] Id.

[281] Id. at 2.

[282] Id.

[283] Id.

[284] Id.

[285] Id.

[286] Hubbell 6/29/99 Int. at 6.

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Washington, D.C. and discussed Hubbell's representation of either Broad or SunAmerica,[287] and Hubbell offered to help SunAmerica on a "national savings policy."[288] On May 25, 1994, Broad retained Hubbell at $5,000 per month to lobby on the national savings policy.[289] Broad expected Hubbell to advise SunAmerica about anything being said in political circles on the national savings policy.[290] Hubbell said he did not know Mrs. Clinton had spoken to Broad about him.[291]

On September 19, 1994, Hubbell sent Broad a letter detailing specific things he would do for SunAmerica,[292] such as contacting specific members of the administration, including the President.[293] Broad was not aware of any evidence that Hubbell completed any of these tasks.[294]

SunAmerica paid Hubbell $35,000 in 1994.[295] Hubbell was terminated shortly after

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[287] Id. at 7.

[288] Id.

[289] Broad 1/17/97 Int. at 3; Letter from Webster Hubbell to Karen Hedland, Senior Vice President and General Counsel for SunAmerica (May 25, 1994) (Doc. No. HIC 016926); Check No. 1074782 from the account of SunAmerica payable to Webster Hubbell for $5,000 (June 1994) (Doc. No. HIC 017494).

[290] Broad 1/17/97 Int. at 3.

[291] Hubbell 6/29/99 Int. at 7.

[292] Letter from Webster Hubbell to Karen Hedlund, Senior Vice President and General Counsel for SunAmerica (Sept. 19, 1994) (Doc. Nos. HIC 016948 through 16949).

[293] Id.

[294] Broad 1/17/97 Int. at 5.

[295] Check from the account of SunAmerica payable to Webster Hubbell for $5,000 (June 20, 1994) (Doc. No. 2073-00000345); Check from the account of SunAmerica payable to Webster Hubbell for $5,000 (July 11, 1994) (Doc. No. 2141-00000177); Check from the account of SunAmerica payable to Webster Hubbell for $5,000 (Aug. 10, 1994) (Doc. No. 2141-00000180); Check from the account of SunAmerica payable to Webster Hubbell for $5,000 (Sept. 21, 1994) (Doc. No. 2073-00000380); Check from the account of SunAmerica payable to

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pleading guilty on December 6, 1994 because Broad felt Hubbell was no longer of value to SunAmerica.[296] Employees of the company, including, former General Counsel Karen Hedlund and Loren Fife, current Co-General Counsel, said Hubbell was appropriately compensated by SunAmerica for the work he performed.[297]

m. Time Warner.

Time Warner hired Hubbell on October 19, 1994 at a monthly rate of $6,250.[298] Hubbell had been referred by Mike Berman, a longtime Democratic Party political consultant, for advice on an antitrust matter pending before the FTC.[299] According to Timothy Boggs, Time Warner's Senior Vice President for Public Policy, Hubbell was not hired to lobby any federal agency.[300] Boggs asked Hubbell if there was any reason why he would not be an appropriate lawyer for the company and if there were any legal or ethical matters that would prevent him from performing his duties.[301] Hubbell replied that there was no reason why he could not do the work.[302]

Webster Hubbell for $5,000 (Oct. 25, 1994) (Doc. No. 2141-00000184); Check from the account of SunAmerica payable to Webster Hubbell for $5,000 (Dec. 9, 1994) (Doc. No. 2141-00000187); Check from the account of SunAmerica payable to Webster Hubbell for $5,000 (Dec. 15, 1994) (Doc. No. 2141-00000190).

[296] Broad 1/17/97 Int. at 5.

[297] Hedlund 1/16/97 Int. at 6; Fife 1/16/97 Int. at 2.

[298] Letter from Webster Hubbell to Timothy Boggs, Vice President for Public Policy for Time Warner (Oct. 19, 1994) (Doc. No. HIC-016872); see also Boggs 3/11/97 Int. at 1.

[299] Boggs 3/11/97 Int. at 1.

[300] Id. at 3.

[301] Id.

[302] Id.

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Hubbell attended at least one meeting in New York City.[303] Boggs said Time Warner did not work with Hubbell long enough to evaluate his performance.[304] Boggs said Hubbell gave the advice on the antitrust matter he was hired to give.[305] Boggs declined to provide details about Hubbell's work, citing the attorney-client privilege.[306] Boggs said Hubbell resigned shortly after pleading guilty.[307] Boggs said Time Warner would never have hired Hubbell had Boggs been aware of the extent of Hubbell's legal problems.[308]

n. Truman Arnold Companies (Truman Arnold).

Truman Arnold was asked by Mack McLarty in late March or early April 1994 to tell business associates that Hubbell was available for work in Washington, D.C.[309] Arnold called Hubbell soon after he resigned from the Justice Department.[310] Hubbell knew who Arnold was from the Presidential campaign, but did not consider him a close friend.[311] Bill Burton, Mack

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[303] Id. at 4.

[304] Id.

[305] Id.

[306] Id.

[307] Id. at 4.

[308] Id. at 3.

[309] Arnold 5/8/97 GJ at 82-83, 99.

[310] Hubbell 6/29/99 Int. at 4.

[311] Hubbell 6/29/99 Int. at 4. President Clinton could not remember speaking with Arnold about supporting or assisting Hubbell. W. Clinton 4/21/00 Campaign Financing Task Force Depo. at 65. The President testified that "it wouldn't surprise me at all if Truman Arnold, if he was going to help Webb, if he had mentioned it to me. I don't remember any specific conversation about this." Id. at 65-66.

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McLarty's Chief of Staff, had suggested Arnold as possible source of employment for Hubbell.[312]

Arnold told Hubbell he wanted to help get Hubbell started, that he always needed good lawyers, and he wanted Hubbell to meet some friends in Texas.[313] Arnold suggested a fee of $18,000, which Hubbell understood to be a six-month retainer of $3,000 per month,[314] requiring him to be available as needed.[315] Hubbell assured Arnold during their April 1994 dinner interview that he was not guilty of wrongdoing and that the billing dispute with Rose was a misunderstanding.[316]

Arnold paid Hubbell $18,000 on April 20, 1994.[317] Arnold said he hired Hubbell for his Washington, D.C. contacts,[318] but that Hubbell did not approach him with any ideas during his six-month retainer.[319] When the six-month contract expired in October 1994, Arnold did not renew the contract because he was "disappointed" with Hubbell's performance.[320] Arnold said if he had known the true nature of Hubbell's situation or that he would plead guilty to the two

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[312] Hubbell 6/29/99 Int. at 3-4.

[313] Id. at 4.

[314] Hubbell 6/29/99 Int. at 4; Arnold 5/8/97 GJ at 110.

[315] Hubbell 6/29/99 Int. at 4.

[316] Arnold 5/8/97 GJ at 89.

[317] Id. at 142.

[318] Id. at 112.

[319] Id. at 115.

[320] Id. at 215.

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felony counts, he would not have hired Hubbell or recommended him to friends and associates.[321]

o. Wayne Reaud (Reaud, Morgan & Quinn).

Wayne Reaud, a Beaumont, Texas, plaintiffs' lawyer[322] hired Hubbell on July 28, 1994, during the meeting also attended by Truman Arnold, C.W. Conn, and Bernard Rapoport.[323] Like the other attendees, Reaud paid Hubbell $18,000 that day in a lump-sum check.[324] Hubbell performed no substantive work for Reaud.[325] Hubbell recalled meeting with Reaud once at the Mayflower Hotel, but recalled no more of the meeting's details.[326]

p. Sprint Corporation.

In late 1994, the Sprint Corporation was putting together a joint venture with French and German companies,[327] and lobbying for passage of telecommunications legislation.[328] Sprint wanted access to the appropriate governmental official to urge passage of the bill.[329] Hubbell came to Sprint one of two ways. James Lewin, Vice President of Government Affairs for Sprint, said he saw Hubbell in a chance encounter and wondered whether he would be available for

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[321] Id. at 107.

[322] Reaud 6/3/97 GJ at 5.

[323] Id. at 62, 68.

[324] Id. at 71; Check No. 7060 from the account of Wayne A. Reaud payable to Web[b] Hubbell for $18,000 (July 28, 1994) (Doc. Nos. 2150-00000026 through 27).

[325] Hubbell 6/29/99 Int. at 6.

[326] Id.

[327] Lewin 3/5/97 GJ at 4.

[328] Lewin 2/26/97 Int. at 1.

[329] Lewin 3/5/97 GJ at 11-12.

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consulting work.[330] He called Hubbell, and set up an appointment.[331] Phil Verveer, an attorney with Wilkie, Farr & Gallagher and husband of a Clinton Administration official, also recalled contacting Hubbell for Sprint.[332] Whoever first made contact, two or three meetings between Hubbell and Lewin followed.[333] Lewin knew Hubbell was "under a cloud" when he resigned from the Justice Department, and that Hubbell was probably under investigation for "something,"[334] though Lewin did not know what.[335]

Verveer discussed Hubbell's dispute with Rose before Hubbell was fired.[336] Hubbell told Verveer the dispute had been going on for years and there was no real substance to it.[337] Hubbell did not tell Verveer he was under criminal investigation.[338] On November 9, 1994, Hubbell had lunch with John Hoffman, Senior Vice President-External Affairs & General Counsel's Office, Sara Smith, Associate Vice President-Government Affairs, Lewin, and Verveer.[339] Hoffman did

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[330] Id. at 12; Lewin 2/26/97 Int. at 2.

[331] Lewin 3/5/97 GJ at 13; Lewin 2/26/97 Int. at 2.

[332] Verveer 3/18/97 Int. at 1, 3.

[333] Lewin 2/26/97 Int. at 2.

[334] Id.

[335] Id. Hubbell failed to mention to Lewin that he was under criminal investigation. Lewin 2/26/97 Int. at 3. Lewin was not aware of the criminal nature of Hubbell's problems until Hubbell pleaded guilty. Lewin 2/26/97 Int. at 3.

[336] Verveer 3/18/97 Int. at 2.

[337] Id.

[338] Id.

[339] Hoffman 3/18/97 Int. at 1; Smith 3/18/97 Int. at 1.

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not ask Hubbell about other clients or potential conflicts of interest,[340] and would have expected Hubbell to advise Sprint if he had other clients creating a subject matter conflict.[341] Hoffman did not know who Hubbell's other clients were.[342]

By letter dated November 17, 1994, Hubbell confirmed his employment with Sprint for six months at $15,000 per month.[343] Sprint fired Hubbell the day newspapers reported that Hubbell pleaded guilty.[344] Hubbell still demanded to be paid $60,000 for the remaining term of the agreement.[345] Lewin negotiated a severance settlement with Hubbell for $30,000.[346]

q. City of Los Angeles Department of Airports.

The City of Los Angeles Department of Airports hired Hubbell in late July 1994, on Alan Arkatov's recommendation.[347] Arkatov was a Los Angeles entrepreneur and political consultant

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[340] Hoffman 3/18/97 Int. at 2. As noted earlier, Hubbell was also employed by Pacific Telesis, a Baby Bell company with interest in the Telecom bill.

[341] Hoffman 3/18/97 Int. at 2.

[342] Id.

[343] Letter from Webster Hubbell to Jim Lewin, Vice President of Government Affairs for Sprint (Nov. 17, 1994) (Doc. No. 2152-00000042); see also Billing Statement from Webster Hubbell to Sprint Corporation for the period of Nov. 15, 1994 to Dec. 14, 1994 (Nov. 17, 1994) (Doc. No. 2152-00000043); Letter from Webster Hubbell to Jim Lewin, Vice President of Government Affairs for Sprint (Dec. 22, 1994) (Doc. No. 2152-00000046); Check No. 551474 from the account of Sprint payable to Webster Hubbell for $30,000 (Feb. 2, 1995) (Doc. No. 2152-00000055).

[344] Lewin 2/26/97 Int. at 5.

[345] Lewin 3/5/97 GJ at 24-25.

[346] Id. at 27-29.

[347] Driscoll 2/6/97 GJ at 25, 31-32; Arkatov 11/14/96 Int. at 3-4.

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who knew Mickey Kantor.[348] In 1994, the City of Los Angeles Airport was working with the FAA and Department of Transportation to transfer funds from the airport to the City of Los Angeles general fund.[349]

Theodore Stein, President of the Airport Commission, and Jack Driscoll, responsible for the airport's operations, wanted Hubbell to use his Washington contacts to "break the log jam" at the Department of Transportation over the funds.[350] Hubbell's original contract was for $49,500 for a six-month period.[351] In late Summer and early Fall 1994, Hubbell attempted to reach the Department of Transportation General Counsel, Stephen Kaplan.[352] The City of Los Angeles fired Hubbell in December 1994, after he told Stein that he would plead guilty to two felonies.[353]

In February 1995, the Department of Transportation approved the City's funds transfer.[354] Hubbell had not been paid for the consulting services he had provided.[355] Hubbell asked the city to pay half of the contract price, $24,750.[356] Hubbell wrote Stein and Driscoll detailing his

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[348] Arkatov 1/22/97 GJ at 5-6. Arkatov's wife, Mary Leslie, worked for the Clinton campaign in 1992, worked on the transition team, and later worked with Erskine Bowles at the SBA. Arkatov 11/14/96 Int. at 3.

[349] Arkatov 11/14/96 Int. at 1.

[350] Stein 2/6/97 GJ at 32; Driscoll 1/22/97 GJ at 47.

[351] Driscoll 1/22/97 GJ at 43.

[352] Kaplan 11/12/96 Int. at 2-3.

[353] Stein 2/6/97 GJ at 48-49.

[354] Id. at 50-51; Driscoll 1/22/97 GJ at 48-49.

[355] Stein 2/6/97 GJ at 52-53; Driscoll 1/22/97 GJ at 49.

[356] Driscoll 1/22/97 GJ at 27.

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work,[357] and told Driscoll that the re-negotiated fee "would be consistent with the prevailing rate for attorneys in the Washington, D.C. area."[358] Hubbell wrote that he had spent fifteen hours talking with Department of Transportation and FAA Officials.[359] The City Controller's Office authorized payment of $24,750 to Hubbell in September 1995.[360]

C. The Tax Prosecution of Webster Hubbell, Suzanna Hubbell, Michael Schaufele, and Charles Owen.

The Independent Counsel's review of Hubbell's consulting arrangements determined that Hubbell had received numerous consulting fees in 1993 that were not declared as income for tax

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[357] Letter from Webb Hubbell to Theodore Stein Jr., Senior Policy Advisor to the Mayor (Mar. 7, 1995) (Doc. No. LX-00000169); Letter from Webb Hubbell to John Driscoll, Executive Director for the City of Los Angeles Department of Airports (July 19, 1995) (Doc. Nos. LX-00000179 through 180); Stein 2/6/97 GJ at 55-56; Driscoll 1/22/97 GJ at 20-22, 35-39. Hubbell described to Driscoll a number of categories of different types of work he had performed and the amount of time associated with each. The letters were drafted with Driscoll's assistance. Driscoll 1/22/97 GJ at 20.

[358] Driscoll 1/22/97 GJ at 34-39. Letter from Webb Hubbell to John Driscoll, Executive Director for the City of Los Angeles Department of Airports (July 19, 1995) (Doc. Nos. LB-00000030 through 31).

[359] Driscoll 1/22/97 GJ at 36-39. Letter from Webb Hubbell to John Driscoll, Executive Director for the City of Los Angeles Department of Airports (July 19, 1995) (Doc. Nos. LB-00000030 through 31).

[360] Driscoll 1/22/97 GJ at 39-40. Kantor testified that in 1995 Hubbell contacted him about the payment dispute and later asked a former law partner with ties to the city government to find out why Hubbell was not being paid. Kantor 12/2/97 GJ at 69-75. In December 1995, the Department of Transportation Office of Inspector General ("DOT-OIG") investigated Hubbell's representation of the City at the request of the House Committee on Government Reform and Oversight. The focus of the investigation was whether anyone in the administration had intervened on behalf of Hubbell or the city because it was his client. The DOT-OIG 's report dated concluded that no one in the Administration had tried to intervene. DOT-OIG Report with Attachment letter to Chairman William F. Clinger Jr., House Comm. on Gov't Reform & Oversight (Mar. 15, 1996).

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purposes.[361] Hubbell failed to report income from C.W. Conn ($18,000), Entrecorp ($5,000), John Moores ($18,000), Barbara Lindemann ($18,000), and Nicholas Stonnington ($18,000).[362]

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[361] Prior to reporting to federal prison in August 1995, Hubbell prepared a handwritten sheet that purported to list his consulting income by client and provided it to Schaufele for his use in preparing the Hubbells' joint individual tax return, Form 1040. Hubbell's handwritten sheet of consulting income and expenses for 1994 (approx. July 1995) (Doc. No. 2126-00000230). Schaufele 7/16/97 GJ at 32-33.

[362] Hubbell's handwritten sheet of consulting income and expenses for 1994 (approx. July 1995) (Doc. No. 2126-00000230). On October 18, 1995, the Hubbells filed a joint U.S. Individual Tax Return, Form 1040, for the 1994 calendar year. See Form 1040, U.S. Individual Income Tax Return captioned Webster L. and Suzanna W. Hubbell for the year 1994. Mrs. Hubbell signed the return for them both. See 1994 Form 1040, U.S. Individual Income Tax Return captioned Webster L. and Suzanna W. Hubbell for the year 1994. This tax return reported Schedule C gross income from Hubbell's consulting business of $376,075. See 1994 Form 1040, U.S. Individual Income Tax Return captioned Webster L. and Suzanna W. Hubbell. This Schedule C and tax return did not report the consulting income from the same six clients totaling $92,000. Hubbell's handwritten sheet of consulting income and expenses for 1994 (approx. July 1995) (Doc. No. 2126-00000230). This return overstated certain business expenses by claiming personal travel expenses for Mrs. Hubbell and their children as business expenditures. Hubbell's handwritten sheet of consulting income and expenses for 1994 (approx. July 1995) (Doc. No. 2126-00000230); American Express Account Statements for Webb Hubbell (Doc. Nos. 2126-00000120 through 124; 2126-00000127 through 131; 2126-00000134; 2126-00000138; 2126-00000141 through 144; 2126-00000148). In October and November 1996, the Hubbells filed a joint Amended U.S. Individual Income Tax Return, Form 1040X, for 1994, filed with the IRS. See 1994 Form 1040X, Amended U.S. Individual Income Tax Return captioned Webster L. and Suzanna W. Hubbell for the year 1994. The Schedule C attached to the amended return reported additional income from Hubbell's consulting business of approximately $77,000 for a new total of $453,075. See 1994 Form 1040X, Amended U.S. Individual Income Tax Return captioned Webster L. and Suzanna W. Hubbell. This additional income was from the five clients which Hubbell did not report on the original 1994 tax return. See 1994 Form 1040, U.S. Individual Income Tax Return captioned Webster L. and Suzanna W. Hubbell. The new Schedule C still claimed approximately $10,000 in personal travel expenses for family members as business expenses. See 1994 Form 1040X, Amended U.S. Individual Income Tax Return captioned Webster L. and Suzanna W. Hubbell. This amended return was prepared and filed after Hubbell was subpoenaed by the Office of the Independent Counsel for certain records related to income from his consulting business. Grand Jury Subpoena No. 2072 (E.D. Ark. Oct. 31, 1996).

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1. "Related to" Jurisdiction.

The Independent Counsel concluded Hubbell's acts were related to the jurisdiction already granted to this Office by the Special Division. Accordingly, on December 31, 1997, the Independent Counsel petitioned the Special Division to refer jurisdiction to this Office pursuant to 28 U.S.C. § 594(e).[363] Section 594(e) permitted an independent counsel to request the Attorney General or the Special Division to refer "matters related to the independent counsel's prosecutorial jurisdiction."[364] The Office did not seek confirmation of its "related to" jurisdiction from the Department of Justice, because this would have placed the Department in the conflicted position of having to evaluate matters involving a former Department of Justice political appointee. This was consistent with the prior practice employed in the Special Division's Order of September 1, 1994, resulting in referral of the Hubbell Rose Law Firm billing matter to this Office.

On January 6, 1998, pursuant to 28 U.S.C. § 594(e),[365] the Special Division granted the Independent Counsel authority to investigate:

> (i) whether Webster L. Hubbell or any individual or entity violated any criminal law, including but not limited to criminal tax violations and mail and wire fraud, regarding Mr. Hubbell's income since January 1, 1994, [and]
>
> (ii) whether Webster L. Hubbell or any individual or entity violated any criminal law, including but not limited to obstruction of justice, perjury, false statements, and mail and wire fraud, related to payments that Mr. Hubbell has received from various individuals and entities since January 1994.[366]

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[363] Application for Order of Referral to Independent Counsel, In re: Madison Guaranty Sav. & Loan Ass'n, Div. No. 94-1 (D.C. Cir. [Spec. Div.]) (filed Dec. 31, 1997).

[364] See 28 U.S.C. § 594(e).

[365] Order, In re: Madison Guaranty Sav. & Loan Ass'n, Div. No. 94-1 (D.C. Cir. [Spec. Div.] Jan. 6, 1998).

[366] Id. at 1-2.

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2. U.S. v. Hubbell et al., Crim. Action No. 98-0151 (JR).

On November 1, 1996, the Independent Counsel served Hubbell with a subpoena duces tecum seeking production of business, financial, and tax documents from January 1, 1993 until the date of the subpoena.[367] Hubbell appeared before the Little Rock federal grand jury on November 19, 1996 and invoked his Fifth Amendment privilege against self-incrimination.[368] The Independent Counsel obtained an order from the U.S. District Court for the Eastern District of Arkansas granting him immunity to the extent allowed by law and directing Hubbell to respond to the subpoena.[369] Hubbell complied and produced 13,120 pages of records.[370]

After reviewing Hubbell's records, the Independent Counsel determined that in addition to owing taxes, interest, and penalties for 1989-92, the Hubbells had not paid a substantial portion of their tax liabilities for 1994-95.[371] By the Fall of 1997 the Hubbells' income tax

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[367] Grand Jury Subpoena No. 2072 (E.D. Ark. Oct. 31, 1996). During this same period, amended tax returns were filed on behalf of the Hubbells for 1994, which reported the $77,000 in income from Hubbell's consulting agreements not reported on the original return. See Order at 2, In re: Grand Jury Subpoena Duces Tecum #2458, (E.D. Ark. Sept. 22, 1997). In preparing the amended return, the law firm representing Hubbell, Howery & Simon, obtained the help of an accountant, Rita Leeb, who worked for Capital Accounting. The offices of Capital Accounting are located with the offices of Howery & Simon. On July 22, 1997, Grand Jury Subpoena #2458 was directed to Leeb, who argued that otherwise responsive documents were subject to the attorney work product doctrine and/or the attorney-client privilege. On September 22, 1997, U.S. District Judge Susan Webber Wright determined that Leeb failed to demonstrate that either the attorney-client privilege or the work product doctrine prevented production. Id.

[368] Hubbell 11/19/96 GJ at 2.

[369] Order Compelling Production of Documents, In Re: Grand Jury Proceedings, No. GJ-96-3 (E.D. Ark. Nov. 14, 1996).

[370] See generally Hubbell production beginning with Doc. Nos. HIC 007264 through HIC 020383.

[371] Pursuant to his December 1994 plea agreement, Hubbell had filed amended federal

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liability totaled over $875,000 in federal, state, and local taxes and penalties.[372]

a. April 1998 Indictment.

The Office presented evidence obtained as a result of the receipt of Hubbell's compelled production of documents (but not the actual documents) to a federal grand jury impaneled in the District of Columbia. On April 30, 1998, the grand jury returned a ten-count indictment against Hubbell, his wife Suzanna Hubbell, accountant Michael Schaufele, and tax attorney Charles Owen.[373] The grand jury charged that during 1994 through 1997, Hubbell, Mrs. Hubbell, Schaufele, Owen, and others, concealed the Hubbells' income, and impeded the ascertainment, assessment, and collection efforts of certain creditors, including the IRS, the State of Arkansas, the District of Columbia, and the Rose Law Firm. Specifically:

- Count 1 charged that the Hubbells, Schaufele, and Owen knowingly, willfully, and unlawfully conspired, in violation of 18 U.S.C. § 371, to commit the following offenses:
  - to willfully attempt to evade or defeat a tax due and owing to the United States, in violation of 26 U.S.C. § 7201;
  - to willfully devise, and intend to devise, a scheme and artifice to defraud the State of Arkansas of taxes, interest, and penalties; the District of Columbia of taxes, interest, and penalties; and the Rose Law Firm of money in connection with the Settlement Agreement entered into a

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income tax returns for 1989-92, which reported the additional income from his Rose Law Firm embezzlement. These amended tax returns resulted in the assessment of $177, 960 in additional taxes, excluding interest and penalties. The Hubbells did not pay this tax. Nor did they pay other tax liabilities incurred in 1994 and 1995. Rather, the Hubbells spent approximately $1.2 million from 1994 through June 30, 1997 -- essentially all of their net worth -- including all the cash they earned or received from gifts or through asset sales.

[372] See Cade 3/04/98 GJ at 20-21; see also Walsh 3/04/98 Int. at 1; Williams 10/01/97 Int. at 1-4.

[373] Indictment, United States v. Webster L. Hubbell et al., No. 98-0151 (D.D.C. Apr. 30, 1998).

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October 1996 and the creation and use of Bridgeport Group, LLC; by means of false and fraudulent pretenses, representations and promises, and by means of the U.S. mail carriers in violation of 18 U.S.C. § 1341; and

- to knowingly and willfully devise, and intend to devise, a scheme and artifice to defraud: the State of Arkansas of taxes, interest, and penalties; the District of Columbia of taxes, interest, and penalties; and the Rose Law Firm of money in connection with the Settlement Agreement entered into in October 1996 and the creation and use of the Bridgeport Group, LLC; by means of false and fraudulent pretenses, representations and promises, and by means of wire transmissions in interstate commerce, in violation of 18 U.S.C. § 1343.[374]

- Count 2 charged that the Hubbells, Schaufele, and Owen corruptly endeavored, and aided and abetted to obstruct and impede the due administration of revenue laws in violation of 26 U.S.C. § 7212(a).[375]

- Count 3 charged that the Hubbells, Schaufele, and Owen willfully attempted to evade and defeat the payment of a large part of the income tax due and owing by the Hubbells for the calendar years 1989-92 and 1994-95 by engaging in conduct the likely effect of which was to mislead and conceal information from the IRS in violation of 26 U.S.C. § 7201.[376]

- Count 4 charged that Webb Hubbell willfully aided and assisted in the preparation and presentation to the IRS, of a joint U.S. Individual Income Tax Return, Form 1040 for the calendar year 1994, for himself and his wife, which he did not believe to be true and correct as to every material matter in violation of 26 U.S.C. § 7206(2).[377]

- Count 5 charged that Schaufele willfully aided, assisted in, and advised the preparation and presentation to the IRS of a U.S. Individual Tax Return, Form 1040, of the Hubbells' for the calendar year 1995, which return was signed and filed with the IRS, and which return was false and fraudulent, in violation of 26 U.S.C. § 7206(2).[378]

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[374] Id. at 29-33.

[375] Id. at 34.

[376] Id. at 35.

[377] Id. at 36-37.

[378] Id. at 38-39.

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- Counts 6 through 10 charged that the Hubbells, Schaufele, and Owen knowingly and willfully devised and executed, and attempted to devise and execute, a scheme and artifice to defraud the District of Columbia, using the mail and interstate wires, of money and property by means of false and fraudulent pretenses, representations and promises, in violation of 18 U.S.C. §§ 1341 and 1343.[379]

b. Jurisdictional Issue.

Despite the Special Division's January 1998 Order already conferring jurisdiction under 28 U.S.C. § 594(e), the defendants moved to dismiss the indictment for lack of jurisdiction.[380] Judge James Robertson, U.S. District Court for the District of Columbia, granted the motion.[381] Judge Robertson claimed the "asserted connection" between the original jurisdiction and the charges relating to the consulting fees was "too attenuated" to constitute "related matters" under 594(e),[382] and that he was not bound by the Special Division's contrary conclusion.[383] On January 26, 1999, the U.S. Court of Appeals for the District of Columbia reversed,[384] refusing to conclude that the consulting fees were unrelated to Hubbell's cooperation.[385]

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[379] Id. at 40-42.

[380] Motion of Defendant Webster Hubbell to Dismiss or for a Kastigar Hearing, No. 98-0151 (D.D.C. May 29, 1998); see also United States v. Hubbell, 11 F. Supp. 2d 25, 28 (D.D.C. 1998).

[381] See United States v. Hubbell, 11 F. Supp. 2d 25, 28 (D.D.C. 1998).

[382] United States v. Hubbell, 11 F. Supp. 2d at 32 (D.D.C. 1998).

[383] Id. at 29-30.

[384] See United States v. Hubbell, 167 F.3d 552 (D.C. Cir. 1999).

[385] Id. at 561.

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c. Act of Production Immunity Issue.

Hubbell requested a hearing under Kastigar v. United States, 406 U.S. 441 (1972), stating that this Office had violated his Fifth Amendment privilege and the terms of his immunity by using his immunized document production against him.[386] Judge Robertson granted Hubbell's motion and dismissed all of the charges.[387] The Court held that this Office had failed to show that all information presented to the grand jury was "untainted by the immunized act of production."[388]

The Independent Counsel thereafter appealed, arguing that it had not violated Hubbell's immunity because the immunity extended only to the act of producing the documents and not their contents.[389] The Independent Counsel also argued that Hubbell's act of production lacked testimonial significance because the existence of business documents was a foregone conclusion.[390] The Department of Justice filed an amicus brief supporting this Office's position.[391]

On January 26, 1999, the Court of Appeals reversed the District Court's dismissal of the

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[386] See United States v. Hubbell, 11 F. Supp. 2d 25 (D.D.C. 1998).

[387] See id. at 37.

[388] United States v. Hubbell, 11 F. Supp. 2d at 36 (D.D.C. 1998) (quoting In re Sealed Case I, 791 F.2d 179, 182 (D.C. Cir. 1986) (internal quotation marks omitted).

[389] Notice of Appeal, United States v. Webster L. Hubbell et al., No. 98-0151 (D.C. Cir. July 12, 1998).

[390] Brief of Appellant United States, United States v. Hubbell et al., No. 98-3080 (D.C. Cir. Aug. 24, 1998) at 22-41.

[391] See Brief Amicus Curiae for the United States Action through the Attorney General, United States v. Hubbell et al., No. 98-3080 (D.C. Cir. Sept. 18, 1998).

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indictment.[392] The Court of Appeals ruled that the indictment would violate Hubbell's immunity and Fifth Amendment privilege only if this Office lacked "a reasonably particular knowledge of subpoenaed documents' actual existence" before production.[393] The Court of Appeals directed the lower court to review this factual determination on remand.[394]

d. Hubbell's June 1999 Conditional Plea Agreement.

Hubbell entered into a plea agreement with the United States but he argued that he could not be prosecuted for this crime because the evidence necessary to convict him could not be used at trial without violating his Fifth Amendment privilege against self-incrimination. Essentially, Hubbell agreed that the government could prove his guilt, if it could use evidence at trial from the documents obtained under the immunity order.

The Independent Counsel argued together with the Department of Justice[395] that Hubbell's rights were not violated. The government and Hubbell reached a compromise to test the important question of whether Hubbell could be tried using evidence derived from the contents of documents produced under a grant of immunity. Hubbell agreed to plead guilty, but if the Supreme Court ultimately agreed with him, then this Office would move to dismiss its case against him.

On June 30, 1999, Hubbell pleaded to a one count Superseding Criminal Information

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[392] See United States v. Hubbell, 167 F.3d 552 (D.C. Cir. 1999).

[393] Id.

[394] Id.

[395] Brief for the United States Department of Justice, United States v. Hubbell, 530 U.S. 27 (No. 99-166).

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charging him with a misdemeanor willful failure to pay tax, in violation of 18 U.S.C. § 7203.[396] The remaining counts of the indictment were dismissed against not only Hubbell, but also Suzanna Hubbell, Michael Schaufele, and Charles Owen.[397]

Hubbell's plea agreement provided for dismissal of the charge against him if the Supreme Court's decision made it reasonably likely that Hubbell's grant of immunity posed a significant bar to his prosecution.[398] Under the terms of the plea agreement, Judge Robertson sentenced Hubbell to a one-year term of probation.[399]

e. Supreme Court Review.

Although this Office prevailed at the Court of Appeals, it believed that the majority opinion had taken an overly expansive view of act of production immunity. This Office petitioned the Supreme Court for writ of certiorari with regard to the act of production immunity. The Supreme Court granted certiorari on October 12, 1999.[400] The Department of Justice filed a brief in support of the Independent Counsel's position as amicus curiae:

> The question presented in this case, which involves the effect of a grant of act-of-production immunity pursuant to 18 U.S.C. 6002 and 6003, can be expected to arise in prosecutions conducted by the United States Department of Justice. The Department therefore has a substantial interest in the resolution of the issue of law

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[396] Plea Agreement, United States v. Webster L. Hubbell et al., No. 98-0151 (D.D.C. June 30, 1999). A copy of the plea agreement is found in Appendix 1 of this Volume.

[397] Motion to Dismiss, United States v. Webster L. Hubbell et al., No. 98-0151 (D.D.C. June 30, 1999).

[398] Plea Agreement, United States v. Webster L. Hubbell et al., No. 98-0151 (D.D.C. June 30, 1999).

[399] Judgment, United States v. Webster L. Hubbell, No. 98-0151 (D.D.C. Jul. 1, 1999).

[400] United States v. Webster L. Hubbell, 120 S. Ct. 320 (1999).

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presented in this case.[401]

The Court heard oral arguments on February 22, 2000. Both the Department of Justice and the Independent Counsel appeared before the Supreme Court.

On June 5, 2000, the Supreme Court ruled in Hubbell's favor, holding that the documentary evidence that the Independent Counsel intended to use against Hubbell was inadmissible because it was derived from testimony compelled under 18 U.S.C. §§ 6002 and 6003, so that such use would violate his Fifth Amendment privilege against compulsory self-incrimination.[402] Pursuant to the terms of the plea agreement, Judge Robertson, U.S. District Court for the District of Columbia, granted the Independent Counsel's motion to dismiss the indictment against Hubbell on October 20, 2000.[403]

IV. ANALYSIS

This section sets forth the Independent Counsel's analysis of potential charges arising from the Hubbell obstruction and tax fraud investigations. The Independent Counsel analyzed: 1) allegations of obstruction of justice (in violation of 18 U.S.C. §§ 1503, 1512) by Hubbell and/or others arising from Hubbell's failure to provide the Office of the Independent Counsel with substantial assistance while receiving consulting income from various supporters of the President; and 2) allegations of tax fraud (in violation of 26 U.S.C. §§ 7212, 7201 and 7206) by Hubbell from his failure to pay taxes on the consulting income he earned.

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[401] Brief for the United States Department of Justice at 1-2, United States v. Hubbell, 530 U.S. 27 (No. 99-166).

[402] See United States v. Hubbell, 530 U.S. 27 (2000).

[403] Order, United States v. Webster L. Hubbell, No. 98-0151 (D.D.C. Oct. 20, 2000).

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A. Obstruction of Justice.

In the Independent Counsel's judgment there was insufficient evidence to prove beyond a reasonable doubt that consulting payments were made to Hubbell with the intent to obstruct the due administration of justice and influence the information he provided to this Office.

There is circumstantial evidence from which a reasonable trier of fact might infer such a scheme. White House principals agreed they should assist Hubbell in securing post-resignation employment. Several of them, including Chief of Staff Mack McLarty and SBA Chairman Erskine Bowles, made calls on Hubbell's behalf, as did Truman Arnold and Vernon Jordan, both supporters of the President. As a result, seventeen people and companies who were supporters of the President hired Hubbell to do consulting work, paying him in excess of $500,000 over a period of less than eighteen months.

In some instances, the amount of work Hubbell performed appeared disproportionate to the fees he received, or the client's satisfaction with the work. There was little, if any, direct evidence reflecting Hubbell's efforts, and most of Hubbell's clients were unable (or unwilling) to recount work that Hubbell had done on their behalf. Few of Hubbell's clients complained when Hubbell failed to provide them with the work he had contracted for, creating the inference that they did not hire him with the expectation of receiving work. This in turn led to the inference that if they did not hire him to produce actual work -- so that both the putative employer and employee were creating the appearance of employment where no work was expected -- then Hubbell was being paid for some other reason that the parties wished to conceal.

When these facts are conjoined with Hubbell's insubstantial assistance with this Office's investigation (and with the White House's efforts to "monitor" Hubbell's cooperation with this Office), a trier of fact might reasonably infer that the consulting payments to Hubbell had the

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effect of causing him, or inducing him, to alter his testimony.

The same set of facts is also susceptible, however, to an alternative, more plausible, and more benign interpretation. In other instances, several of Hubbell's clients reported that they did receive the expected value for their money in the form of advice and assistance from Hubbell. This testimony tends to establish that Hubbell did, in fact, provide at least some of the services for which he was retained.

More importantly, all of Hubbell's clients reported their dismay on learning of, or learning more details about, Hubbell's criminal conduct -- rebutting the inference that their activity was intended to further an unlawful purpose. Almost all of them terminated Hubbell immediately upon conviction, with other terminations coming shortly thereafter. A number of them tried to recover their payments from Hubbell, or to end future obligations to pay Hubbell. Moreover, Hubbell had a history of deceiving clients before, so the argument that these clients had been deceived as well is not implausible.

This course of conduct is inconsistent with an inference that Hubbell was being paid money to induce him to decline to cooperate with the Independent Counsel. Had the payments to Hubbell been intended to purchase his silence, it is likely that they would have continued following his conviction. The majority did not. Had the payments to Hubbell been intended to purchase his silence, it is likely that his clients would not have sought to recoup their payments to him. Some of them did.

It is, therefore, the Independent Counsel's judgment that the evidence is more consistent with a determination by a number of supporters of the President to help Hubbell following his resignation, only to find later, to their dismay, that his conduct was substantially worse than they had been led to believe when they agreed to support him. Their motives for doing so are

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doubtless as numerous as the number of individuals -- some may well have wished to curry favor with the Clinton Administration, others to help a friend, and still others who wanted a former high level official with influence to lobby on their behalf. In any event, there is simply insufficient evidence to prove beyond a reasonable doubt that any of the persons paying the money intended to pay Hubbell hush money to buy his silence, or that there was an organized effort by anyone with such criminal intent to get unwitting clients to do so. For this reason, the Independent Counsel declined prosecution of this aspect of the investigation of Hubbell.

B. Tax Fraud.

In the Independent Counsel's judgment, the available evidence gathered by this Office during the course of its investigation warranted the filing of criminal charges against Webster Hubbell, Suzanna Hubbell, Michael Schaufele, and Charles Owen, who, in the Independent Counsel's judgment, engaged in actions which concealed the Hubbells' tax liability and which had the effect of obstructing and impeding the collection of the Hubbell's tax obligations.

Taken together, these actions were sufficient, in the Independent Counsel's judgment, to demonstrate the requisite intent to violate the law. They formed a pattern and series of willful acts, which had both the effect of impeding, and manifested the intent to impede, the efforts of the IRS (as well as the State of Arkansas and the District of Columbia) to collect taxes due and owing to them.

The grand jury returned an indictment reflecting these charges. Mr. Hubbell pleaded guilty to a superseding information of willful tax evasion. The Supreme Court determined that substantially all of the government's evidence against Hubbell was derived in violation of his Fifth Amendment privilege, and the Office moved to dismiss all charges against him in accordance with his plea agreement. It was deemed appropriate, in an exercise of prosecutorial

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discretion, to dismiss criminal charges against Mrs. Hubbell, Mr. Schaufele, and Mr. Owen as well.[404]

V. SUMMARY CONCLUSION

Hubbell, a former Chief Justice of the Arkansas Supreme Court and a former Associate Attorney General of the United States, admitted to billing fraud of approximately $482,000, and tax evasion relating to that income. He also failed to pay taxes owed to the United States, the State of Arkansas, and the District of Columbia. And, as detailed in Volume II, Part B, Chapter 2 of this Report, he billed the RTC in excess of $1 million, while failing to disclose material conflicts of interest.

Notwithstanding conclusions about these matters, the Independent Counsel did not conclude that Hubbell deliberately and willfully obstructed this Office's investigation for the purpose of concealing evidence relating to President and Mrs. Clinton. The evidence was insufficient to prove that the extent of Hubbell's cooperation with this Office's investigation was criminally influenced by anyone.

Accordingly, after a thorough and comprehensive investigation, the Independent Counsel concludes that there was insufficient evidence of a scheme to pay Hubbell "hush money" and that there was insufficient admissible evidence supporting the tax fraud charges against Hubbell to sustain a prosecution. This matter is now closed.

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[404] The Independent Counsel's discretionary decision not to pursue criminal prosecution does not affect the IRS's right to make its own legal determinations and, if it determines such action would be merited, to pursue civil legal remedies from the Hubbells, Schaufele, or Owen.

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PART D

ROSE LAW FIRM BILLING RECORDS

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I. INTRODUCTION

During the 1992 presidential campaign, the media began to examine legal work Hillary Clinton did for Madison Guaranty Savings & Loan Association ("Madison Guaranty") while a partner at the Rose Law Firm ("Rose"). The Rose Law Firm (principally Webster Hubbell and Vince Foster) helped respond to press queries by collecting records related to Mrs. Clinton's Madison Guaranty work -- including "billing records" reflecting the charges she recorded for that work, hours worked and specific tasks.

When regulatory Independent Counsel Robert Fiske was appointed in 1994, the grand jury issued three subpoenas demanding production of all documents referring or relating to Madison Guaranty Savings & Loan and Rose. These included:

- Subpoena No. 105, issued on February 9, 1994 to Rose with a production date of February 15, 1994;[405]
- Subpoena No. 319, issued on May 24, 1994 to William Jefferson Clinton with a production date of June 28, 1994;[406] and
- Subpoena No. 320, issued on May 24, 1994 to Hillary Rodham Clinton with a production date of June 28, 1994.[407]

The billing records were not produced in response to Fiske's subpoenas. Ronald Clark, Rose's chief operating officer, testified that the billing records were responsive to the subpoenas.[408] However, Clark said the firm was unable to locate any "copies whatsoever of the

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[405] Grand Jury Subpoena No. 105 (E.D. Ark. Feb. 9, 1994).

[406] Grand Jury Subpoena No. 319 (E.D. Ark. May 24, 1994).

[407] Grand Jury Subpoena No. 320 (E.D. Ark. May 24, 1994). Independent Counsel Kenneth Starr later issued one additional subpoena to Carolyn Huber calling for production of the billing records. Grand Jury Subpoena No. 814 (E.D. Ark. Jan. 30, 1995).

[408] Hearings Relating to the Investigation of Whitewater Dev. Corp. and Related Matters

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bills or the billing memoranda."[409]

Two years later, on January 5, 1996, President and Mrs. Clinton's private attorney, David Kendall, produced a set of Rose billing records to the Independent Counsel.[410] Kendall also produced copies of the records to the RTC and the Senate Whitewater Committee, and distributed them to the press.[411] These records reflected the work of Mrs. Clinton and other Rose attorneys' work for Madison Guaranty in the 1980s.[412] The following chart details the amount of time and the amount billed by Mrs. Clinton, as reflected on the billing records.

MATTER	DATE	TIME (IN HOURS)	BILLING RATE	MATTER VALUE	AMOUNT BILLED TO CLIENT
1. Stock Offering	5/6/85	5.00	$120.00	$600.00	$600.00[413]
1. Stock Offering	7/9/85	1.20	$120.00	$144.00	$144.00[414]
1. Stock Offering	1/21/86	1.00	$125.00	$125.00	$125.00[415]

Before the Senate Special Comm. to Investigate Whitewater Dev. Corp. and Related Matters of the Senate Comm. on Banking, Housing, and Urban Affairs, 104th Cong. 89-90 (Jan. 18, 1996) (testimony of R. Clark) [hereinafter "Senate Whitewater Comm. Hearing"].

[409] Senate Whitewater Comm. Hearing, supra note 408, at 90 (Jan. 18, 1996) (testimony of R. Clark). Clark also testified the firm spent over a thousand dollars on legal fees searching through files trying to locate a set of the billing records. Id.

[410] See Letter from David E. Kendall, the Clintons' attorney, to John D. Bates, Associate Independent Counsel, Jan. 5, 1996, at 1; see also Rose Billing Records (1985-1987) (Doc. Nos. DEK014936 through 015049).

[411] See Kendall 2/2/96 GJ at 9.

[412] Rose Billing Records (1985-1987) (Doc. Nos. DEK014936 through 015049).

[413] Rose Billing Records (May 6, 1985) (Doc. No. DEK014947).

[414] Rose Billing Records (July 9, 1985) (Doc. No. DEK014967).

[415] Rose Billing Records (Jan. 21, 1986) (Doc. No. DEK015009).

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2. Limited Partnership	5/8/85	2.00	$120.00	$240.00	$240.00[416]
2. Limited Partnership	5/23/85	0.50	$120.00	$60.00	$60.00[417]
2. Limited Partnership	8/9/85	2.10	$120.00	$252.00	$252.00[418]
2. Limited Partnership	8/29/85	0.20	$140.00	$28.00	$28.00[419]
2. Limited Partnership	10/25/85	0.50	$120.00	$60.00	$60.00[420]
2. Limited Partnership	1/21/86	0.50	$125.00	$62.50	$62.50[421]
3. Bibler Golden	N/A	0.00	N/A	$0.00	$0.00[422]
4. General	10/18/95	1.70	$125.00	$212.50	$212.50[423]
4. General	11/22/85	2.20	$125.00	$275.00	$275.00[424]
4. General	1/21/86	2.5	$125.00	$312.50	$312.50[425]
4. General	3/28/86	0.10	$125.00	$12.50	$12.50[426]
4. General	5/13/86	2.00	$140.00	$280.00	$280.00[427]

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[416] Rose Billing Records (May 8, 1985) (Doc. No. DEK014949).

[417] Rose Billing Records (May 23, 1985) (Doc. No. DEK014956).

[418] Rose Billing Records (Aug. 9, 1985) (Doc. No. DEK014983).

[419] Rose Billing Records (Aug. 29, 1985) (Doc. No. DEK015003).

[420] Rose Billing Records (Oct. 25, 1985) (Doc. No. DEK014999).

[421] Rose Billing Records (Jan. 21, 1986) (Doc. No. DEK015012).

[422] According to the billing records, Mrs. Clinton did not bill any hours for Matter 3 -- Bibler Golden. See Rose Billing Records (1985-1987) (Doc. Nos. DEK014936 through 015049).

[423] Rose Billing Records (Oct. 18, 1985) (Doc. No. DEK014990).

[424] Rose Billing Records (Nov. 22, 1985) (Doc. No. DEK014991).

[425] Rose Billing Records (Jan. 21, 1986) (Doc. No. DEK015014).

[426] Rose Billing Records (Mar. 28 1986) (Doc. No. DEK015028).

[427] Rose Billing Records (May 13, 1986) (Doc. No. DEK015032).

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4. General	6/26/86	0.40	$140.00	$56.00	$56.00[428]
4. General	3/19/87	unknown	unknown	unknown	$500.00[429]
5. I.D.C.	1/21/86	7.30	$125.00	$912.50	$2,731.25[430]
5. I.D.C.	3/28/86	2.10	$125.00	$262.50	$262.50[431]
5. I.D.C.	5/13/86	0.20	$140.00	$28.00	$70.00[432]
6. Babcock	5/13/86	6.00	$140.00	$840.00	$840.00[433]

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[428] Rose Billing Records (June 16, 1986) (Doc. No. DEK015038).

[429] A handwritten notation of "$500 -- services rendered by Hillary Rodham Clinton through 3/20/87" was included on the March 1987 billing record. The source for the additional $500.00 is unknown. Rose Billing Records (Mar. 19, 1987) (Doc. No. DEK015048).

[430] Rose Billing Records (Jan. 21, 1986) (Doc. No. DEK015017). On the January 1986 internal billing memorandum for Mrs. Clinton's work on Matter 5, the matter value was valued at $912.50 for a total of 7.30 hours. However, the amount to bill the client was handwritten on the memo as $2,731.25. Mrs. Clinton explained this discrepancy by assuming that Rose secretaries collected her billing time sheets but did not enter all of the time into the computer. H. Clinton 4/25/98 Depo. at 76-78. Mrs. Clinton further explained her billing entries:

> Q. Okay. Was it your practice -- we see that one entry where you've added time in. Were there other times where somebody would add time in that was not reflected in your time sheets? We see here some $1000 worth of time added in.
>
> A. I don't think that happened often, but I'm sure that it happened from time to time because of the way that I didn't always keep my records or I wasn't always in the office.

Id. at 84-85.

[431] Rose Billing Records (Mar. 28, 1986) (Doc. No. DEK015022).

[432] Rose Billing Records (May 13, 1986) (Doc. No. DEK015030). On the May 1986 internal billing memorandum for Mrs. Clinton's work on Matter 5, the matter value was valued at $28.00 for a total of 0.20 hours. However, the amount to bill the client was handwritten on the memo as $70.00. (Mrs. Clinton explained this discrepancy by assuming that Rose secretaries collected her billing time sheets but did not enter all of the time into the computer. H. Clinton 4/25/98 Depo. at 76-78).

[433] Rose Billing Records (May 13, 1986) (Doc. No. DEK015036).

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6. Babcock	6/26/86	2.20	$140.00	$308.00	$308.00[434]
6. Babcock	8/27/86	0.60	$140.00	$84.00	$84.00[435]
TOTALS		**40.30**		**$5,655.00**	**$7,515.75**

Kendall testified that he received the records from Carolyn Huber, Special Assistant to the President, Director of Personal Correspondence,[436] at her White House office on January 4, 1996.[437] Huber testified she found the billing records sometime in the first two weeks of August 1995 without recognizing their significance, putting them in a box in her office until she rediscovered them in January 1996.[438]

Consistent with the Independent Counsel's jurisdiction to examine efforts to obstruct justice on matters within his jurisdiction, the Independent Counsel investigated why the billing records were not produced in response to lawful subpoenas.

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[434] Rose Billing Records (June 16, 1986) (Doc. No. DEK015041).

[435] Rose Billing Records (Aug. 27, 1986) (Doc. No. DEK015044).

[436] Huber was a secretary at Rose until December 1978. Huber 1/16/96 GJ at 30. At Mrs. Clinton's request, Huber became the Mansion Administrator over the Governor's Mansion from January 1, 1979 until January 10, 1981. Id. at 31. Huber also balanced the Clintons' checkbooks and wrote checks for them. Id. Huber returned to Rose as the office administrator from January 1981 until January 1993. Id. at 33. After Governor Clinton was elected President, she came along as Special Assistant to the President, Director of Personal Correspondence. Huber 6/30/95 Senate Whitewater Comm. Depo. at 23, 27.

[437] Kendall 2/2/96 GJ at 11-12.

[438] Huber 1/16/96 GJ at 17-18; Huber 1/17/96 Senate Whitewater Comm. Depo. at 51-52; Senate Whitewater Comm. Hearing, supra note 408, at 8-9 (Jan. 18, 1996) (testimony of C. Huber).

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II. FINDINGS

The investigation into the disappearance of Rose records relating to Hillary Rodham Clinton's work for Madison Guaranty, the discovery of a portion of those records in the White House in January 1996, and the discovery of another set of those records in Vincent W. Foster Jr.'s attic in July 1997, has resulted in the following findings and conclusions by the Independent Counsel:

Concerning collection of documentary records at Rose in the spring of 1992:

- Webster L. Hubbell and Vincent W. Foster Jr. collected billing records about Mrs. Clinton's work for Madison Guaranty from Rose archives. One of them had the firm's accounting office create a computer printout summarizing Mrs. Clinton's work for Madison Guaranty.

- In the spring of 1992, Hubbell, Foster, and Mrs. Clinton reviewed billing records detailing Mrs. Clinton's work for Madison Guaranty.

- At least two copies of original billing records were created.

- One of those copies -- the copy allegedly found in the White House residence in 1996 -- was in the possession of Foster and Mrs. Clinton at some point. Forensic (including fingerprint examination) and testimonial evidence established that each of them physically handled this copy.

- Another copy later found in Foster's attic was, at some time, in Foster's personal possession.

- Original billing records, which should have been archived at Rose, and the original computer-generated billing summary, have not been found.

- Checkout logs produced by Rose showed that on March 25 and May 18, 1992, Mrs. Clinton's secretary, Mildred Alston, checked out files labeled "HRC Time Sheets."

- Hubbell obtained Mrs. Clinton's time sheets for 1987 through 1989 from Alston.

- Mrs. Clinton's time sheets for 1985 through 1986 have not been found.

Concerning shipment of documents from Arkansas to Washington, D.C., and their

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movement in the White House:

- The evidence was insufficient to determine conclusively how the billing records were transported to Washington, D.C.

- The evidence excluded the possibility that Hubbell transported the billing records to Washington, D.C. or that they arrived in the shipment of Mrs. Clinton's other Rose records to the White House.

- The evidence could not exclude the possibility that the billing records traveled to Washington, D.C. with records from the Governor's Mansion or with Foster's personal records.

- The evidence could not exclude the possibility that the billing records went to Washington, D.C. in some other shipment of records not known by the Independent Counsel.

- Records from the Governor's Mansion were variously maintained in White House residence Rooms 319A, 323, and 309. Evidence gathered could not exclude the possibility that some records from the Governor's Mansion were also maintained at other locations in the White House.

- After Vince Foster's suicide, a portion of records maintained in his office were stored in White House residence Room 323's closet.

Concerning searches conducted in response to subpoenas issued by the Independent Counsel:

- Counsel and staff searched five boxes and two file cabinets containing the Clintons' financial records in response to subpoenas from the Independent Counsel.

- Counsel and staff searched records shipped to Mrs. Clinton from Rose in response to subpoenas from the Independent Counsel.

- Counsel and staff searched records collected and maintained by Hubbell in response to subpoenas from the Independent Counsel.

- The evidence was insufficient to determine whether counsel and staff searched all other records transported to Washington, D.C. in response to subpoenas from the Independent Counsel.

Concerning the billing records' August 1995 placement in Room 319A:

- The evidence was insufficient to determine who put the billing records in White House residence Room 319A.

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- The evidence could not exclude the possibility that White House staff members, construction workers, or White House visitors, put the billing records in Room 319A.

- The evidence could not exclude the possibility that Mrs. Clinton put the billing records in Room 319A.

- The evidence could not exclude the possibility that the billing records found in Room 319A came from Foster's office.

- Three witnesses testified about conduct by Mrs. Clinton consistent with her having had the billing records in July 1995.

- Mrs. Clinton gave sworn testimony denying possession of the billing records in July 1995, and denying placing them in Room 319A or knowing how they got there.

Concerning the billing records' discovery and handling after discovery:

- Carolyn Huber testified she discovered the billing records in August 1995 in White House residence Room 319A.

- Huber testified that she failed to recognize the records' significance and put them in a box in her office until January 1996.

- In January 1996, Huber testified that she examined the billing records, recognized their significance, and gave them to David Kendall, personal attorney to President and Mrs. Clinton.

- Kendall, Henry Schuelke and Jane Sherburne copied the billing records before giving them to the Office of the Independent Counsel.

- The FBI cannot exclude the possibility that the handling of the billing records destroyed forensic evidence.

Concerning discovery of a second set of billing records found in the attic of Vince Foster's home:

- Foster stored copies of some records he had on Mrs. Clinton's Madison Guaranty work in a briefcase in his attic, which were discovered in July 1997.

- Foster's copies included documents and information not contained in the version of the billing records discovered in the White House in January 1996.

- Among records in Foster's possession (but not in the White House

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production) was a copy of a Rose bill to the Bank of Kingston, dated July 30, 1982 and marked "paid" on October 23, 1984. Foster's records also contained a chronology not included in the White House production that Foster created with entries showing payment of the Bank of Kingston bill.

As to Mrs. Clinton:

- The evidence was insufficient to prove beyond a reasonable doubt that Mrs. Clinton withheld documents from the grand jury or otherwise intended to obstruct justice.

III. FACTUAL SUMMARY

This Part summarizes evidence found about the billing records' creation, transport, disappearance and discovery:

- First, creation and collection of billing records at Rose during the 1992 campaign.

- Second, possible ways the records traveled from Little Rock to Washington, D.C. when President Clinton assumed office.

- Third, searches for the billing records made by White House employees, other officials and their attorneys in response to subpoenas issued by the Independent Counsel.

- Fourth, placement of the billing records in White House residence Room 319A.

- Fifth, Huber's discovery of the billing records in White House residence Room 319A in August 1995 and their rediscovery and production to the Independent Counsel in January 1996.

- Sixth, fingerprints found on the billing records and the handling by Kendall, Schuelke and Sherburne may have reduced the forensic value of the fingerprint analysis.

- Seventh, discovery of a second set of billing records in Vince Foster's attic in July 1997.

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A. Creation and Collection of Billing Records at Rose.

Several different kinds of documents comprising the billing records were produced to the Office of the Independent Counsel.[439] The first few pages were a "Client Billing & Payment History" for Madison Guaranty with a creation date of February 12, 1992.[440] The remainder was a series of stapled records; each set included 8 ½" x 11" copies of client bills for a particular time period.[441] The documents included one bill from December 1981 for work Rose did for the Bank of Kingston, and a number of bills for work done for Madison Guaranty from May 1985 to December 1986.[442]

Most bill sets were attached to 11" x 17" billing memoranda -- computer-generated accounting documents -- showing detailed information about the work individual Rose attorneys had performed. The "original" records Kendall produced to the Independent Counsel were likely photocopies, notated with original handwriting in red ink, and with original yellow post-it notes attached.

To determine these records' origin, the Independent Counsel investigated how the Bank of Kingston bill from 1981 and Madison Guaranty billing records from 1985 through 1987 were gathered at Rose in 1992.

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[439] See Rose Billing Records (1985-1987) (Doc. Nos. DEK014936 through 015049).

[440] Rose Client Billing & Payment History (run off date Feb. 12, 1992) (Doc. Nos. DEK014936 through 40).

[441] Rose Billing Records (Dec. 1981, 1985-1987) (Doc. Nos. DEK014941 through 015049).

[442] Id.

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1. Requests During the 1992 Campaign to Gather the Billing Records.

During the 1992 presidential campaign, Rose staff gathered records of Mrs. Clinton's work for Madison Guaranty into five separate groups: (1) a computer-generated printout of billing information and; (2) four other distinct groups responsive to specific requests to retrieve records from Rose's archives.

a. Computer Billing Records.

On February 12, 1992 at 8:41 a.m., either Vince Foster or Webb Hubbell directed the Rose accounting office to print a copy of the "Client Billing & Payment History," detailing Hillary Clinton's work for Madison Guaranty.[443] The records summarized Mrs. Clinton's total billing between May 1985 and May 1987 on six different Madison Guaranty matters.

Hubbell testified that either he or Foster would have asked accounting to print this summary.[444] Hubbell could not remember who in accounting printed it.[445] The Independent Counsel interviewed several Rose support staff, but none remembered printing this record.[446]

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[443] Hubbell 5/7/96 GJ at 20-21; Senate Whitewater Comm. Hearing, supra note 408, at 48 (Feb. 7, 1996) (testimony of W. Hubbell); Rose Client Billing & Payment History (run off date Feb. 12, 1992) (Doc. Nos. DEK014936).

[444] Hubbell 5/7/96 GJ at 20-21; Senate Whitewater Comm. Hearing, supra note 408, at 48 (testimony of Hubbell).

[445] Hubbell 5/7/96 GJ at 21-22.

[446] Sherry Ryan, a former Rose billing clerk, did not remember either seeing the billing records or printing them from a computer. She also explained that these billing memoranda could only be printed by the accounting department printer. Ryan 5/9/96 Int. at 2-3.

Carolyn Huber testified that she did not print the Madison billing records, or gather any old Madison Guaranty bills or billing memoranda. Huber 1/16/96 GJ at 40-41. Huber could not remember anyone, including Foster or Hubbell, asking her to obtain the billing records. Huber 1/17/96 Senate Whitewater Comm. Depo. at 95-96.

Melba Thomas was hired at Rose in November 1990 to operate the large copier with the ability to copy from 11" x 17" paper, located next to the accounting department. Thomas did not

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b. Billing Records in Remote Storage.

Hubbell testified that either he or Foster also asked accounting to get Madison Guaranty records from remote storage.[447] William Kennedy testified that early in 1992, Foster asked for his help retrieving Madison Guaranty files from remote storage.[448] Kennedy asked Mary Russell to get the files.[449]

February 14, 1992 check out logs at Rose's remote storage facility show that Mary

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remember being asked to copy any Madison Guaranty billing documents, though it was so common for her to copy billing memoranda that she would not necessarily remember it. Thomas 5/29/96 Int. at 1.

Gena Wilfong, a former Rose accounting supervisor, did not remember anyone asking her to collect billing records about Mrs. Clinton's clients or Madison Guaranty. Wilfong 5/28/96 Int. at 1-2.

Mildred Alston, Mrs. Clinton's Rose secretary, testified she did not know how these billing records were "produced" at the firm. Alston 4/16/96 GJ at 29. She said she had no role in getting these records from the computer; her only role was to request them from accounting. She did not remember how they were retrieved. Alston 5/30/96 Int. at 2; see also Cline 4/19/96 Int. at 2; Edwards 5/30/96 Int. at 1; Eschbacher 5/10/96 Int. at 2; Hatch 5/10/96 Int. at 1; Johnson 5/10/96 Int. at 2.

[447] Hubbell 5/7/96 GJ at 15, 18-19. The billing records probably were removed from archives in 1989, returned, and retrieved again in 1992. Former Rose attorney Gary Speed said he retrieved the original Madison Guaranty billing records in 1989 for a lawsuit against the Frost & Company accounting firm. Speed 8/7/96 Int. at 1. Speed said while reviewing the Frost audit work papers on Madison Guaranty, he found an audit response letter to the auditors Mrs. Clinton signed. Speed described the billing records he received as similar in volume, size, and content to the billing records produced to the Independent Counsel, though he received originals. The records Speed retrieved from accounting included 8 ½" x 11" yellow sheets attached to 11" x 17" green and white computer paper. Speed briefly reviewed the records and noticed that most of Madison Guaranty billable time was for Mrs. Clinton and Richard Massey, an associate. Speed gave the records to Hubbell and did not remember seeing them again. Speed 8/7/96 Int. at 1-2. Hubbell testified he did not remember obtaining the billing records during the Frost litigation. Hubbell 8/22/96 GJ at 74.

[448] Kennedy 1/15/96 Senate Whitewater Comm. Depo. at 48-49; Kennedy 12/17/97 GJ at 113, 122.

[449] Kennedy 1/15/96 Senate Whitewater Comm. Depo. at 49.

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Russell[450] checked out billing records on Madison Guaranty for the 1985-1987.[451] These records included files labeled: "'85 Madison Guaranty," "'86 (M's)," and "'87 (M's) Paid Client."[452] On February 21, 1992, Russell also checked out records about Madison Bank and Bank of Kingston from 1981.[453] These included: "'81 & '82 B's & K's," "Madison Bank," and "Bank of Kingston."[454] Check out logs show that both "'86 (M's)" and "'81 & '82 B's & K's" were returned to storage.[455]

Russell said files in storage were typically maintained the same as documents produced to the Independent Counsel, 8 ½" x 11" client bills attached to 11" x 17" billing memoranda.[456]

On March 24, 1992, a file for "Madison Guaranty" was checked out to "Vera."[457] Rick Massey testified that at that time, following newspaper articles that had criticized Rose's representation of Madison Guaranty, he ordered his Madison Guaranty work files from remote

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[450] Mary Russell was a Rose employee in charge of closed files in storage. Russell 4/16/96 GJ at 4-5.

[451] Rose storage facility checkout log (Feb. 1992) (Doc. No. 105-00054214).

[452] Id. Rose staff testified the files labeled "M's" included accounting records for multiple clients, including Madison Guaranty, beginning with the letter "M." Russell 4/16/96 GJ at 25-27.

[453] Rose storage facility checkout log (Feb. 1992) (Doc. Nos. 105-00054214 through 15). Russell testified she was asked to retrieve files every day, and did not remember being asked about these files. Russell 4/16/96 GJ at 24.

[454] Rose storage facility checkout log (Feb. 1992) (Doc. Nos. 105-00054214 through 15).

[455] See Rose storage facility checkout log (Feb. 1992) (Doc. No. 105-00054214); see also Russell 4/16/96 GJ at 12-13 (Rose procedure required accounting clerks to highlight entries in the check-out logs for returned files). The "'86 (M's)" and the "'81 & '82 B's & K's" entries were highlighted, meaning they had been returned to Rose's remote storage facility.

[456] Russell 4/16/96 GJ at 27-28.

[457] Rose storage facility checkout log (Mar. 24, 1992) (Doc. No. 105-00054216).

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storage.[458] At Foster's request, Massey copied his files and gave them to Foster.[459]

Finally, on March 25, 1992, a second Bank of Kingston file was checked out to "VF/WHK."[460] Russell said "VF/WHK" suggested she was looking for one of Foster's files for William Kennedy.[461] Kennedy agreed he had asked Russell to retrieve files from remote storage for Foster.[462]

The Office of the Independent Counsel interviewed Rose file clerks or billing clerks who worked there in early 1992, and none remembered seeing or handling Madison Guaranty billing records.[463]

2. Webb Hubbell and Vince Foster Had the Billing Records in 1992.

Hubbell testified he had the billing records in February or March 1992.[464] Hubbell said that because of the press's inquiry into Mrs. Clinton's Madison Guaranty work, especially her work before the Arkansas Securities Department ("ASD"), either he or Foster asked accounting

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[458] Massey 12/3/97 GJ at 33-34. Massey's secretary, Vera Hitt, did not remember requesting any Madison Guaranty files from remote storage during the Presidential campaign. Hitt 4/19/96 Int. at 1-2.

[459] Senate Whitewater Comm. Hearing, supra note 408, 34-35 (Jan. 11, 1996) (testimony of R. Massey).

[460] Rose storage facility checkout log (Mar. 24, 1992) (Doc. No. 105-00054216). Check out logs showed this was the only file returned to remote storage. See id. This Bank of Kingston file was returned to storage and later produced to the Independent Counsel. Bank of Kingston file produced by Rose (Doc. Nos. 1171-00000008 through 446).

[461] Russell 4/16/96 GJ at 35.

[462] Kennedy 12/17/97 GJ at 121-122; Kennedy 1/15/96 Senate Whitewater Comm. Depo. at 48-49.

[463] Edwards 5/30/96 Int. at 1; Eschbacher 5/14/96 Int. at 2; Hatch 5/10/96 Int. at 1; Ryan 5/9/96 Int. at 2; Thomas 5/29/96 Int. at 2; and Wilfong 5/28/96 Int at 2.

[464] Senate Whitewater Comm. Hearing, supra note 408, at 42 (Feb. 7, 1996) (testimony of W. Hubbell).

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to gather the billing records.[465] Hubbell reviewed bills for any specific contacts Mrs. Clinton might have had with the ASD to corroborate campaign statements.[466]

He thought there was one set of records he and Foster used.[467] Hubbell also thought he reviewed records, perhaps with Foster before giving them to Foster.[468] Hubbell recognized some red handwriting on the bills produced to the Independent Counsel as Foster's, which was not on the bills when Hubbell first reviewed them in 1992.[469] Hubbell also recognized some red handwriting as his own.[470] Hubbell testified that an asterisk on a yellow post-it note, placed next to the underlined entry "telephone conversation with B. Bassett," was his handwriting.[471]

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[465] Id. Hubbell said that when a client's bill was prepared at Rose, there were four copies. The original was sent to the client, one copy was given to the lawyer who would place it in the client file, and two copies were sent to the accounting department. Accounting attached one of the copies to the billing memorandum. Hubbell 5/7/96 GJ at 16-18. Hubbell explained that billing memoranda were summaries of attorneys' time sheets. Id. at 33-34.

[466] Senate Whitewater Comm. Hearing, supra note 408, at 42 (Feb. 7, 1996) (testimony of W. Hubbell).

[467] Id. at 50.

[468] Id. at 43.

[469] Id. 47, 49.

[470] Hubbell 5/7/96 GJ at 23; Senate Whitewater Comm. Hearing, supra note 408, at 45-46 (Feb. 7, 1996) (testimony of W. Hubbell).

[471] Hubbell 5/7/96 GJ at 23-24; Senate Whitewater Comm. Hearing, supra note 408, at 45-46 (Feb. 7, 1996) (testimony of W. Hubbell); see Rose Billing Invoice to Madison Guaranty Savings & Loan (May 8, 1985) (Doc. No. DEK014942). Hubbell also thought he wrote some of the red circles on the bills. Hubbell 5/7/96 GJ at 24-26; see Rose Billing Invoice to Madison Guaranty Savings & Loan at 3 (May 8, 1985) (Doc. Nos. DEK014944); Rose Billing Records for Madison Guaranty Savings & Loan (May 8, 1985) (Doc. No. DEK014947); Rose Billing Records for Madison Guaranty Savings & Loan (May 8, 1985) (Doc. No. DEK014950); Rose Billing Records for Madison Guaranty Savings & Loan at 3 (May 8, 1985) (Doc. No. DEK014952). Hubbell distinguished his red marks from Foster's by explaining that his hand shakes so that "bad scratching with a red pen" or "bad handwriting" was probably his handwriting. Hubbell 5/7/96 GJ at 23, 25. Hubbell said the circle on Doc. No. DEK014956 was "better," and probably not his. Id. at 26 (referring to Rose Billing Records for Madison Guaranty

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Hubbell said he would have received original green and white computer paper rather than photocopies.[472] He did not remember seeing the records on white photocopy paper and doubted the firm could copy something oversized like the billing records.[473]

After Hubbell reviewed the billing records he gave them to Foster.[474] Hubbell said he last had the records in March 1992.[475] He and Foster never discussed where the records went,[476] and Mrs. Clinton never asked him where they were kept.[477] Hubbell testified he did not remove the records from the firm, did not know if Foster had done so, and could not explain how they got to the White House.[478] Hubbell said Foster was the last person he knew with the billing records.[479]

Hubbell testified in the Senate that although he believed that he spoke with Mrs. Clinton about the records, he could not recall the details of a conversation.[480] Before the grand jury, Hubbell testified he might have had a telephone conversation about the records with Mrs.

Savings & Loan (May 23, 1985) (Doc. No. DEK014956)).

[472] Hubbell 5/7/96 GJ at 22; see id. at 30 ("if he put in front [of] me a Xerox, then I would know that. And I just don't remember that happening").

[473] Hubbell 5/7/96 GJ at 22. Rose employee Melba Thomas thought that by 1992 there were three copiers able to copy from 11" x 17" paper onto 11" x 17" paper. Thomas 5/29/96 Int. at 1.

[474] Hubbell 5/7/96 GJ at 35; Senate Whitewater Comm. Hearing, supra note 408, at 43 (Feb. 7, 1996) (testimony of W. Hubbell).

[475] Hubbell 5/7/96 GJ at 37.

[476] Id. at 60-61; Senate Whitewater Comm. Hearing, supra note 408, at 52 (Feb. 7, 1996) (testimony of W. Hubbell).

[477] Hubbell 5/7/96 GJ at 74.

[478] Senate Whitewater Comm. Hearing, supra note 408, at 52-53 (Feb. 7, 1996) (testimony of W. Hubbell).

[479] Hubbell 5/7/96 GJ at 36.

[480] Senate Whitewater Comm. Hearing, supra note 408, at 128 (Feb. 7, 1996) (testimony of W. Hubbell). Hubbell testified he did not speak with President Clinton about the billing

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Clinton and Beverly Bassett.[481] Hubbell's "best memory" was that Foster spoke with Mrs. Clinton about the billing records.[482]

3. Attempts to Locate Mrs. Clinton's Time Sheets.

The Office of the Independent Counsel attempted to find time sheets Mrs. Clinton had in 1985 and 1986. Check out logs Rose produced showed that on March 25 and May 18, 1992, "Millie" checked out files labeled "HRC Time Sheets."[483] Millie Alston, Mrs. Clinton's secretary, did not remember checking out any of Mrs. Clinton's time sheets from remote storage.[484] The check out sheets did not refresh Alston's memory.[485]

Hubbell testified that during the campaign, he received 1987 to 1989 time sheets for Mrs. Clinton's work from Millie Alston.[486] Mrs. Clinton's time sheets were not available from storage,

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records. See id.

[481] Hubbell 5/7/96 GJ at 36. Hubbell thought when he told Mrs. Clinton the records showed she had a conversation with Bassett, Mrs. Clinton replied that she did not remember it, and he told her that Massey said the call occurred in her office when Bassett phoned her. Id. at 68-69.

[482] Senate Whitewater Comm. Hearing, supra note 408, at 128 (Feb. 7, 1996) (testimony of W. Hubbell). Hubbell did not know whether Foster spoke with Mrs. Clinton about the records. Hubbell 5/7/96 GJ at 36-37.

[483] Rose storage facility checkout log (Mar. 25, 1992) (Doc. No. 105-00054198); Rose storage facility checkout log (May 18, 1992) (Doc. No. 105-00054199).

[484] Alston 4/16/96 GJ at 20.

[485] Alston 5/30/96 Int. at 2-3.

[486] Hubbell 5/7/96 GJ at 32-33. Hubbell produced these time sheets to the Independent Counsel on January 23, 1996. Hillary Rodham Clinton's Daily timesheets (Doc. Nos. 266-00002129 through 2147 & 266-00002353 through 2360). Included among these time sheets were records showing time Mrs. Clinton billed for the Little Rock Municipal Airport Commission. Hillary Rodham Clinton's daily timesheets (1987 through 1989) (Doc. Nos. 266-00002353 through 2360). Other time sheets of Mrs. Clinton's were produced to the Independent Counsel by David Kendall, who received them from John Nields, Hubbell's attorney. Included among these time sheets were records showing time Mrs. Clinton billed for Seth Ward's

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and they might have been destroyed in July 1988 under Rose's routine records maintenance and destruction policy.[487]

B. Transferring the Documents from Little Rock to Washington, D.C.

To determine how the billing records got to the White House residence, the Office of the Independent Counsel investigated how documents were shipped from Little Rock to Washington, D.C. following the 1992 Presidential election. The Office of the Independent Counsel examined five distinct shipments: 1) records sent from the Governor's Mansion to the White House; 2) Rose records shipped to the White House for Mrs. Clinton; 3) Vince Foster's office records shipped to the White House; 4) Clinton campaign records; and 5) Hubbell's records transferred to Washington, D.C.

1. Moving Documents from the Governor's Mansion to the White House between 1993 and 1996.

Most records shipped to Washington were shipped from the Governor's mansion in Little Rock. This section details the packing, shipping, arrival, and unpacking in Washington, and handling of these records in Washington before 1996.

a. Packing in Little Rock.

After the 1992 election, Carolyn Huber moved the Clintons' personal effects from Little Rock to Washington, D.C.[488] She contracted with Merchants Transfer and Storage for two moving vans to leave Little Rock on January 16, 1993 and arrive in Washington, D.C. on

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company, POM. See Hillary Rodham Clinton's daily timesheets (1987 through 1989) (Doc. Nos. DEK 220033 through 56).

[487] See Letter from Alden L. Atkins, attorney representing Rose, to W. Hickman Ewing Jr., Deputy Independent Counsel (Feb. 9, 1996) (Doc. No. 105-00092699).

[488] Huber 1/17/96 Senate Whitewater Comm. Depo. at 22.

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January 20, 1993.[489] Huber did not oversee packing at the Governor's Mansion, but she was present for loading and unloading the vans.[490]

Huber created a color code system to categorize the Clintons' belongings, each color corresponding to each item's destination in Washington, D.C.[491] Yellow stickers designated items for a Maryland storage facility; blue stickers designated items for the third floor of the White House residence; and orange stickers designated items for the non-residence part of the White House.[492]

Huber arranged to include five boxes of the Clintons' personal financial records in a moving van at the Governor's Mansion in Little Rock,[493] along with two file cabinets with the Clintons' personal papers.[494] One black metal file cabinet with four drawers of the Clintons' paid bills, passports and other personal documents came from Mrs. Clinton's study; the other, also taken from Mrs. Clinton's study, was a short beige two drawer cabinet with Mrs. Clinton's personal letters.[495]

b. The White House Residence.

Most boxes from the Governor's Mansion were delivered to the White House's residential East Wing. Three rooms on the third floor of the residence served as storage space during the relevant time periods, Room 319A, Room 323 and Room 309. Huber and others called Room

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[489] Huber 9/24/96 GJ at 5, 8, 28.

[490] Id. at 7-8, 28.

[491] Id. at 7-8, 25-26.

[492] Id.

[493] Id. at 11, 13-14.

[494] Id. at 11-12, 14.

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319A the "book room,"[496] because it contained books used for the Clintons' personal reading.[497] The room also stored gifts and pictures the Clintons received, magazines and newspapers for archival, and several file cabinets.[498] In 1996, the room had one file cabinet from Arkansas Huber had stored in the room, plus one additional file cabinet.[499] One cabinet held current financial and insurance documents relating to a condominium, the previous year's paid bills, and personal documents like the Clintons' marriage license and passports.[500] The second cabinet held vacation memorabilia, maps, magazines, and newspaper articles.[501]

Next to Room 319A is Room 323. Early in the Clinton Administration, Room 323 stored personal items, such as furniture and boxes.[502] Room 323 was later converted to an office, initially used by Huber.[503] In the summer of 1995, Room 323 became Mrs. Clinton's personal office[504] to work on her book, It Takes a Village.[505] Room 309 was a storage room down the hall

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[495] Id. at 11-12.

[496] Huber 1/16/96 GJ at 17; D. Blair 5/31/96 Int. at 1; H. Clinton 1/26/96 GJ at 74; H. Dickey 2/13/96 Int. at 2; Fanning 2/21/96 Int. at 1; Freemyer 2/5/96 Senate Whitewater Comm. Depo. at 51; C. Marshall 1/25/96 Int. at 2; Walters 1/26/96 GJ at 16.

[497] Huber 1/16/96 GJ at 17.

[498] Id. Some witnesses described Room 319A as a "transition area," a "storage area," or a "junk room" where items were stored temporarily until a permanent place was found. See Brandts 2/21/96 Int. at 1; Carter 2/22/96 Int. at 1; CW 6/19/96 Int. at 2; White 2/20/96 Int. at 2.

[499] Huber 1/17/96 Senate Whitewater Comm. Depo. at 47-49; Senate Whitewater Comm. Hearing, supra note 408, at 13 (Jan. 18, 1996) (testimony of C. Huber).

[500] Huber 1/17/96 Senate Whitewater Comm. Depo. at 48-49; Senate Whitewater Comm. Hearing, supra note 408, at 13 (Jan. 18, 1996) (testimony of C. Huber).

[501] Huber 1/17/96 Senate Whitewater Comm. Depo. at 47; Senate Whitewater Comm. Hearing, supra note 408, at 13-14 (Jan. 18, 1996) (testimony of C. Huber).

[502] H. Clinton 1/26/96 GJ at 65-66; Walters 1/26/96 GJ at 23-24.

[503] C. Clark 3/6/96 Int. at 1; Freemyer 2/5/96 Senate Whitewater Comm. Depo. at 57.

[504] Walters 1/26/96 GJ at 23-24; H. Clinton 1/26/96 GJ at 66. Mrs. Clinton said Room

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from Room 323, used by Huber to store more of the Clintons' personal records.[506]

c. Unloading at the White House.

When the Clintons' belongings were unloaded, Huber and some volunteers went through them on the residence's third floor to organize items and determine which items to keep and which to send to storage.[507] Huber did not personally review every box.[508] The team unpacked the box, set items on a table, and decided where to place each item.[509]

Huber said five boxes containing the Clintons' financial records from the Governor's Mansion were stored in the closet of Room 323, the room Huber intended to use as an office.[510] The two file cabinets from the Governor's Mansion went to Room 319A.[511] Huber later moved some personal documents from the black metal file cabinet to a credenza in Room 323.[512]

Kaki Hockersmith, a Little Rock interior decorator who worked at the White House, said the residence was disorganized from the outset. [513] Hockersmith said the Secret Service agents

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323 also contained a computer used by Chelsea Clinton. Id.

[505] H. Clinton 1/26/96 GJ at 67. Huber testified that Mrs. Clinton began working on her book in Room 323 sometime before the Clintons left for vacation in August. Huber 1/16/96 GJ at 97. The Clintons began their vacation in Wyoming on August 15, 1995. White House ushers presidential log (Aug. 15, 1995) (Doc. No. T001639).

[506] Huber 9/24/96 GJ at 50.

[507] Id. at 29.

[508] Id.

[509] Id.

[510] Id. at 30, 32-33.

[511] Id. at 31.

[512] Id. at 34.

[513] Hockersmith 6/26/96 Int. at 3.

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examined every box when it arrived, leaving them disorganized.[514] When a box's destination was not known, it went to Room 319A for temporary storage.[515]

The moving company's inventory records show it shipped several of President and Mrs. Clintons' personal files to Washington, D.C.[516] Huber did not know the contents of these files,[517] but thought some were campaign files.[518] Nothing from the inventory lists allowed her to confirm this.[519] Although Huber did not know where all of those files went, she was "sure they were delivered to the third floor . . . . [b]ecause that's where most of all the boxes went."[520] Huber did not know whether any of those files went to Mrs. Clinton's West Wing office or to the second floor residence.[521]

Huber was able to verify that some boxes of files listed on the moving company's inventory went to Room 319A, and remained there for a year or two until she was able to review and reorganize them.[522] She said the files were mostly magazine articles or books.[523] Huber did

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[514] Id.

[515] Id.

[516] See Moving company inventory records (Jan. 16, 1993) (Doc. Nos. BF-DC-00000005) ("Permafile Box—HRC Files," "HRC Permafile Box," "Black Plastic File Box," "Permafile—HRC," "HRC Files"); id. (Doc. No. BF-DC-00000023) ("Hillary Personal Files"); id. (Doc. No. BF-DC-00000024) ("HRC Misc. Items & Stationary 323"); id. (Doc. No. BF-DC-00000026) ("Mags & Files," "HRC Personal File Rm. 323"); id. (Doc. No. BF-DC-00000028) ("Special Files BC & HRC Rm. 323," "HRC Personal Items 323").

[517] Huber 9/24/96 GJ at 20-22.

[518] Id. at 57-58.

[519] Id. at 58.

[520] Id. at 20.

[521] Id. at 42-43.

[522] Id. at 41-42.

[523] Id. at 42.

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not move files from boxes in Room 319A to cabinets in Room 319A or Room 323.[524]

d. Moving the Files -- 1993 to 1996.

When Room 323's closet was closed for construction in the summer of 1995, boxes of financial records were moved to residence Room 309.[525] Huber testified she did not remove any documents from those five boxes.[526] As of her grand jury appearance in September 1996, the five boxes were still in Room 309.[527]

Capricia Marshall, assistant to Mrs. Clinton, testified that in January 1993, movers "just were putting boxes everywhere"[528] and Room 323 was used as storage space.[529] Chief Usher Gary Walters also testified Room 323 was used to store furniture and boxes then.[530] Marshall said that in the spring or summer of 1993, the Room 323 boxes went into Room 319A to remodel Room 323 as an office.[531] When remodeling was done, Room 319A items returned to Room 323.[532]

In the summer of 1995, while the Clintons and Huber were away,[533] construction workers expanded Room 323's heating and air conditioning ducts.[534] Marshall said everything in Room

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[524] Id. at 43.

[525] Id. at 50.

[526] Id. at 43.

[527] Id. at 50.

[528] Marshall 1/25/96 GJ at 36.

[529] Id. at 37.

[530] Walters 1/26/96 GJ at 23.

[531] Marshall 1/25/96 GJ at 37-38.

[532] Id. at 38.

[533] Huber 9/24/96 GJ at 50.

[534] Marshall 1/25/96 GJ at 38.

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323 moved back to Room 319A.[535] When work was completed, items were returned from Room 319A to Room 323.[536] After returning from vacation, Huber discovered boxes had been moved out of Room 323's closet.[537] She did not know who moved the boxes, but she found them in Room 309, where they remained until 1996.[538]

Some documents left Room 323 between 1993 and the billing records' discovery in early 1996. Marshall said Huber moved documents from Room 323 to Huber's East Wing office in early 1995.[539] A large credenza was also removed from Room 323.[540] Huber said that in late 1994 or 1995 she removed documents from the credenza into a filing cabinet safe in Room 319A.[541] When Mrs. Clinton began writing her book in May or June of 1995, Huber emptied the separate smaller wooden filing cabinet in Room 323 so Mrs. Clinton had some storage space for her book.[542] Marshall said that from time to time, she saw Huber carrying small boxes of papers and knickknacks out of Room 323 to Huber's East Wing office.[543]

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[535] Id. at 39.

[536] Id.

[537] Huber 9/24/96 GJ at 50.

[538] Id.

[539] Marshall 1/25/96 GJ at 39-40.

[540] Id.

[541] Huber 9/24/96 GJ at 37-38.

[542] Marshall 1/25/96 GJ at 39-40.

[543] Id. at 40.

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2. Rose Shipped Documents to the White House.

On February 25, 1993, Millie Alston wrote to Amy Stewart, a Rose attorney, about Mrs. Clinton's Rose files,[544] enclosing a six-page list of Mrs. Clinton's files still at Rose.[545] Mrs. Clinton had work files on the list either for destruction or shipment to Washington, D.C.[546] None of the files listed referred to Madison Guaranty.[547]

Rose shipped two boxes of documents to the White House in the spring of 1993.[548] Alston gave them to Huber.[549] Huber testified that she had those boxes in her office in January 1996.[550] She said the files were Mrs. Clinton's charitable projects and not client files.[551]

3. Boxes from Vincent Foster's Rose Office.

Lorraine Cline, Foster's Rose secretary, boxed Foster's office materials before he left for the White House in 1993.[552] Cline said Foster took his personal files with him, leaving active and

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[544] Letter from Mildred Alston, Mrs. Clinton's secretary, to Amy Stewart, Rose attorney (Feb. 25, 1993) (Doc. Nos. 319-00035587 through 588).

[545] Index of Hillary Rodham Clinton's personal/organization files (Feb. 25, 1993) (Doc. Nos. 319-00035589 through 35594).

[546] Personal note from Mildred Alston, Mrs. Clinton's secretary, to Hillary Clinton (Feb. 25, 1993) (Doc. No. 319-00035595).

[547] See Index of Hillary Rodham Clinton's personal/organization files (Feb. 25, 1993) (Doc. Nos. 319-00035589 through 35594).

[548] Alston 4/16/96 GJ at 40; Alston 6/7/96 Senate Whitewater Comm. Depo. at 30-31. Huber thought the boxes were received at the White House in February 1993. Huber 1/17/96 Senate Whitewater Comm. Depo. at 17-18.

[549] Alston 4/16/96 GJ at 40.

[550] Huber 1/16/96 GJ at 113-14; Huber 1/17/96 Senate Whitewater Comm. Depo. at 18.

[551] Huber 1/16/96 GJ at 114.

[552] Cline 4/19/96 Int. at 3.

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closed client files at the firm.[553] Active files were given to various Rose attorneys and closed files were sent to remote storage.[554] Cline prepared an index of these files and produced the index to the Office of the Independent Counsel.[555] No billing records appear on the index of documents Rose sent to remote storage.[556] Cline did not remember seeing any files about Madison Guaranty in Foster's office.[557] Rose also produced a draft file list of Mrs. Clinton's files Foster removed when he left. The list included a file entitled, "Whitewater Development."[558]

Maggie Williams, Mrs. Clinton's Chief of Staff, testified that after Foster's death, she removed the Clintons' personal files from Foster's office and had the documents placed in Room 323's closet.[559]

4. Documents from the Presidential Campaign.

Joan Watkins was charged with storing documents from the presidential campaign.[560] Watkins said that while organizing documents, she learned that Betsey Wright had removed

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[553] Id.

[554] Id.

[555] Id.; see Letter from Ronald Clark, Rose attorney, to Amy St. Eve, Associate Independent Counsel, with a copy of closed client files list prepared by Vince Foster and his secretary, Deborah Gorham (Jan. 31, 1995) (Doc. Nos. 105-00009141A through 185).

[556] See Letter from Ronald Clark, Rose attorney, to Amy St. Eve, Associate Independent Counsel, with a copy of closed client files list prepared by Vince Foster and his secretary, Deborah Gorham (Jan. 31, 1995) (Doc. Nos. 105-00009141A through 185).

[557] Cline 4/19/96 Int. at 3-4.

[558] List of Clinton files removed from Vince Foster's office after his death (Doc. No. BD-DC-00000005).

[559] See Williams 6/2/95 GJ at 36-37; Senate Whitewater Comm. Hearing, supra note 408, at 155 (Jul. 26, 1995) (testimony of M. Williams).

[560] Watkins 6/28/95 Int. at 2.

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certain documents from the campaign before she (Watkins) took charge of storage.[561] Betsey Wright told Watkins she (Wright) would handle the storage of records she already had directly with the Clintons.[562] Watkins arranged to store the rest of the campaign records at Central Records Services, Inc., in Little Rock.[563] In late 1993, Susie Whitacre, custodian of Clinton's gubernatorial and presidential campaign records,[564] told Watkins that Betsey Wright visited Central Records and removed documents from storage.[565]

Wright testified she never saw Rose billing records before her appearance before the Senate Whitewater Committee in January 1996.[566] Wright acknowledged she kept ten boxes of sensitive campaign documents known as the "Betsey files."[567] Wright removed them before Watkins took control.[568] Wright turned over the "Betsey files" to Hubbell in January 1993 at his request.[569]

5. Documents Maintained by Webster Hubbell.

Hubbell received the Rose "Betsey files" from Betsey Wright around January 1993.[570] Wright produced a five-page index of those files to the Independent Counsel.[571] No Madison

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[561] Id. at 3.

[562] Id. at 4.

[563] Id. at 3.

[564] Whitacre 7/17/95 Int. at 3.

[565] Watkins 6/28/95 Int. at 6.

[566] Wright 2/29/96 GJ at 69; see Wright 1/26/96 Senate Whitewater Comm. Depo. at 7-8.

[567] Wright 2/29/96 GJ at 85, 87; Hubbell 12/19/95 GJ at 150.

[568] Wright 2/29/96 GJ at 84.

[569] Id. at 85, 88.

[570] Hubbell 12/19/95 GJ at 149-50.

[571] Five page index of files from Betsey Wright (Jan. 15, 1993) (Doc. Nos. 1221-

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Guaranty files were listed.[572] Hubbell's additions to the "Betsey files"[573] included three original files on the firm's Madison Guaranty work before the ASD Hubbell got from Foster;[574] Mrs. Clinton's time records for 1987 to 1989 from Millie Alston;[575] Mrs. Clinton's files on Southern Development Bank Corporation that Hubbell retrieved during the campaign;[576] and an original client file for the Bank of Kingston that Hubbell obtained from remote storage during the campaign.[577]

Hubbell later moved all of the files to his Little Rock home.[578] When the school year ended and his family moved to Washington, D.C., Hubbell moved the "Betsey files," Madison Guaranty files, the Bank of Kingston file, and Southern Development Bank Corporation files to their home in Washington, D.C.[579] Hubbell said that in October 1993, he removed two files from that collection.[580] One file was about Whitewater Development Corporation, which Hubbell gave to Jim Lyons in October 1993 for him to use to prepare for a meeting with Bruce Lindsey.[581] Although Lyons later returned the Whitewater files, Hubbell did not conduct any inventory of

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00000002 through 7).

[572] Id.

[573] Hubbell 5/7/96 GJ at 41.

[574] Id. at 42. Richard Massey said he gave a copy of his Madison Guaranty files on the ASD matter to Foster during the 1992 campaign. Senate Whitewater Comm. Hearing, supra note 408, at 28-35 (Jan. 11, 1996) (testimony of R. Massey).

[575] Hubbell 5/7/96 GJ at 39-40.

[576] Id. at 41.

[577] Id. at 41-42.

[578] Id. at 38.

[579] Id. at 38-39.

[580] Id. at 48.

[581] Id. at 49.

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them.[582]

C. Search and Production of Documents to the Independent Counsel.

Four of these separate sources of documents -- the Clintons' personal records, Mrs. Clinton's law firm records, Hubbell's records, and the "Betsey files" were searched, in one manner or another, in response to subpoenas issued by regulatory Independent Counsel Fiske and/or the Office of Independent Counsel. The fifth potential source of records -- documents Foster got from Rose -- was not in his office when the first subpoena was served.

1. Personal Records.

Various people reviewed five boxes of the Clintons' personal financial documents maintained by Huber in Room 323 in 1994 and 1995. Huber testified that in 1994, she copied documents from boxes in Room 323 at David Kendall's request.[583] Nicole Seligman of Williams & Connolly testified that in June 1994, she, Sylvija Strikis, and perhaps Kendall conducted a search of personal and financial documents in Room 323.[584] Seligman testified that she and Strikis reviewed every piece of paper they found in Room 323, and did not see the billing records.[585]

Huber testified that she searched for documents about Madison Guaranty again in February 1995 when she received a personal grand jury subpoena from the Independent Counsel.[586] She said she searched boxes in Room 323's closet, a file cabinet in Room 323, her

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[582] Id. at 54.

[583] Huber 1/17/96 Senate Whitewater Comm. Depo. at 24.

[584] Seligman 2/15/96 GJ at 64.

[585] Id. at 64, 68.

[586] Huber 1/16/96 GJ at 6-7.

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East Wing office, and her own personal residence.[587] She found no records responsive to the subpoena.[588] Neither Huber, nor attorneys from Williams & Connolly, conducted a comparable search of Room 319A at any time.[589]

2. Mrs. Clinton's Rose Records.

David Kendall testified he and Huber together reviewed boxes of Mrs. Clinton's Rose records that Amy Stewart, a Rose attorney, sent to the White House in March 1994 in Room 319A.[590] Kendall thought the boxes had not been opened before they conducted their review.[591] In a letter to the Independent Counsel, Kendall said the boxes were first opened by Huber on March 12, 1994.[592] Kendall testified there were no billing records in those boxes.[593]

3. Hubbell/Wright Records.

Hubbell gave all but two files he had to David Kendall,[594] which Kendall produced to the Department of Justice, Criminal Division attorneys to satisfy a Little Rock grand jury subpoena.[595] Included were most of the "Betsey files" but not the Whitewater file.

Hubbell testified he kept Mrs. Clinton's timesheets for 1987 through 1989 and the Bank

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[587] Id. at 8-11.

[588] Id. at 10-11.

[589] Id. at 15; Seligman 2/15/96 GJ at 33.

[590] Kendall 2/6/96 GJ at 42; Kendall 2/7/96 Senate Whitewater Comm. Depo. at 25-26.

[591] Kendall 2/6/96 GJ at 42.

[592] See Letter from David E. Kendall, the Clintons' attorney, to William Duffey, Criminal Division Attorney at 1(May 10, 1994).

[593] Kendall 2/7/96 Senate Whitewater Comm. Depo. at 29.

[594] Hubbell 5/7/96 GJ at 48-49, 55-56.

[595] See id. at 55; Letter from David E. Kendall, the Clintons' attorney, to Donald B. Mackay, Dept. of Justice, Crim. Div. Fraud Section attorney, at 1-3 (Jan. 14, 1994).

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of Kingston file along with his personal files at a storage facility in Little Rock.[596] Following Hubbell's guilty plea in Little Rock in December 1994, he produced the original Bank of Kingston file to the Office of Independent Counsel on February 1, 1995.[597]

Just prior to his Little Rock grand jury appearance on December 19, 1995, Hubbell's attorney, John Nields, telephoned the Office of Independent Counsel to say he had Mrs. Clinton's timesheets for 1987 to 1989. Nields said Hubbell had given these records to him earlier but he had not produced them or told the Independent Counsel about them.[598] When Nields was told the Independent Counsel wanted these records immediately, Nields said he had to consult with Rose's attorney and David Kendall.[599]

Mrs. Clinton's attorney produced these 1987-1989 timesheets to the Independent Counsel's office on January 23, 1996. Hubbell's attorney redacted Mrs. Clinton's timesheets according to counsel for Rose's instructions.[600] Timesheets showing Mrs. Clinton's 1985 or 1986 Madison work were neither produced nor located at Rose.

In January 1994, Wright reviewed additional campaign documents stored in Little Rock.[601] During that search, she discovered a box of apparently original Whitewater

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[596] Rose file for the Bank of Kingston representation, produced by Webster L. Hubbell (Feb. 1, 1995) (Doc. Nos. GG-000000001 through 215).

[597] Hubbell 5/7/96 GJ at 165-166.

[598] Hubbell 12/9/95 GJ at 166-67.

[599] Id. at 167-68.

[600] Letter from Laura Shores, Hubbell's attorney, to Deputy Independent Counsel Hickman Ewing (Jan. 22, 1996) (Doc. Nos. HIC006214-006933) (enclosing redacted billing records of Hillary Rodham Clinton for 1987-1989).

[601] Wright 2/29/96 GJ at 82.

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documents.[602] Because of the documents' sensitive nature, Wright hand-carried them to David Kendall, who thereafter produced the materials to the Department of Justice, Criminal Division which in turn gave them to Mr. Fiske.[603] Wright also removed several files -- "Beverly Bassett Schaffer's files, securities files, appointments files, S & L board files" -- and brought them to her Washington, D.C. office.[604] She later gave them to her attorney, who gave them to Mr. Fiske.[605]

4. Rose Billing Records.

Before January 5, 1996, no Rose billing records were produced detailing its representation of Madison Guaranty to the Office of the Independent Counsel. Ronald Clark, Chief Operating Officer of Rose, ordered numerous diligent searches for records and none were found.[606]

D. Huber Testified She Found the Records in Room 319A.

Huber testified that sometime in the first two weeks of August 1995, she found packed in a box in Room 319A what she later determined were Rose billing records of Mrs. Clinton's Madison Guaranty work.[607] As a result of Huber's testimony, the Office of the Independent Counsel investigated events in the White House in July and August 1995 to learn who might

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[602] Id.

[603] Wright 7/26/95 Int. at 4; Wright 1/26/96 Senate Whitewater Comm. Depo. at 189; Letter from David E. Kendall, the Clintons' attorney, to Donald B. Mackay, Dept. of Justice, Crim. Div. Fraud Section attorney, at 3 (Jan. 14, 1994).

[604] Wright 2/29/96 GJ at 92.

[605] Id. at 95; Letter from Alan M. Cohen, Betsey Wright's attorney, to William S. Duffey Jr., Associate Independent Counsel at 1 (July 11, 1994) (Doc. No. 217-00036520).

[606] See Senate Whitewater Comm. Hearing, supra note 408, at 91-92 (Jan. 18, 1996) (testimony of R. Clark).

[607] Huber 1/16/96 GJ at 17-19.

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have placed the documents there.

1. Denials of Responsibility.

The Independent Counsel's investigation tried to determine who had access to Room 319A in late July and early August 1995. The Independent Counsel determined that the following people (with total number of people indicated) had access:

- White House Executive Residence staff (140);
- Construction contractors renovating the heating, ventilation and air conditioning system of the White House (67);
- Secret Service officers escorting construction workers (57);
- Overnight houseguests (78);
- Visitors to the residence (37);
- Staff not recorded on entry and exit logs (2) (Capricia Marshall and Carolyn Huber).[608]

The Office of the Independent Counsel conducted interviews in person or by telephone with most of these people, excluding some because of age or other logistical reasons.[609] Each person

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[608] Various sources were used to determine who had access to the third floor of the White House in late July and early August 1995. The number of Executive Residence staffers with access was determined by reviewing Independent Counsel agents' interview schedules, and a residence staff list from the White House. Similarly, the number of construction contractors was determined by examining Independent Counsel agent's interview schedules, and a list of construction workers from the White House. The only source consulted to determine Secret Service officers with access was the Independent Counsel agent interview list. The process used to determine how many overnight guests and visitors to the residence had access was slightly different. Names were gathered by examining Independent Counsel agents' interview schedules, grand jury transcripts, White House schedules from the United States Secret Service and White House ushers, and a list of Mrs. Clinton's staff produced by the White House.

[609] The Independent Counsel determined it was unnecessary to interview several people who, although Executive Residence staff, did not have access to the third floor. These included greenhouse staff, White House calligraphers, and certain National Park Service employees. In

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interviewed was asked whether he or she placed Rose billing records in Room 319A or whether they knew how the records appeared in the White House residence. Each person interviewed said they did not place the billing records in Room 319A and did not know how they got there.

2. Extrinsic Evidence Relating to Room 319A.

Lacking testimony about the records' placement in Room 319A, the Office of the Independent Counsel tried to determine from extrinsic evidence who was responsible for placing the billing records in Room 319A. This section summarizes evidence about:

- White House residence access;
- White House renovations in August 1995;
- Mrs. Clinton's conduct;
- The transfer of documents from Foster's office; and
- Mrs. Clinton's testimony about her own conduct.

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total, the Independent Counsel did not interview thirty-seven Executive Residence staffers. Twelve construction workers were not interviewed because the Independent Counsel determined they were not in the relevant areas of the White House. Twenty-seven overnight guests and residence visitors were not interviewed. Twenty-three of these guests were eliminated due to age (either a friend of Chelsea Clinton's or the child of a visitor). Three people were not interviewed because their respective spouses were interviewed. One overnight guest was not interviewed because he lived in England.

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a. Access to White House Residence.

Chief Usher Gary Walters described general access to the residence.[610] Besides United States Secret Service, executive residence staff have "RES" passes that give them unescorted access to all of the residence.[611] The second and third floors can be reached four ways: by two elevators (the Presidential elevator and a service elevator), and two stairways (the "Grand Staircase" goes to the second floor only and the other staircase is located next to the Presidential elevator).[612] A Uniformed Division Secret Service officer stands at each access point to control entry of the second and third floors.[613] Once in the residence area (second and third floors), no controls limit access to specific areas.[614] Access is controlled: first, when a Secret Service uniform officer checks passes at the ground floor, and second, when the elevators automatically stop at the Usher level where the duty usher confirms passage.[615] Other than the First Family, Secret Service employees and individuals with "RES" passes, no one has unlimited access to the residential area.[616]

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[610] Walters explained the layout of the residence portion of the White House. Walters 1/24/96 Int. at 2. The third floor contains several guest rooms and guest living quarters, an office for the First Lady, an exercise room, a "book room," and offices for the executive chef, valets and maitre d'. Id. The First Lady's office, Room 323, is six to eight feet from the door to the book room, Room 319A. Id. The exercise and housekeeping storage rooms are accessible only through the book room, Room 319A. Id.

[611] Id. at 4.

[612] Id. at 7.

[613] Id.

[614] Id. Guests would have access to the residence. Walters 1/26/96 GJ at 40.

[615] Walters 1/24/96 Int. at 7. The Ushers and Doormen have elevator keys to bypass the stop at the Usher level for First Family members. Id.

[616] Id. Carolyn Huber and Capricia Marshall were the only exceptions to this rule. Id. at 7-8; see Walters 1/26/96 GJ at 40.

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Walters said that in July and August 1995, Room 319A was used as a book room because it had shelving.[617] But it was also used to hold things temporarily until a permanent location was found.[618] Walters said that Room 319A's contents changed several times, with tables and boxes moved in and out.[619] These changes were made to prepare for the considerable amount of heating, ventilation and air conditioning repairs made while the First Family was away.[620]

b. Renovations to Residence.

In July and August 1995, the heating, ventilation, and air conditioning system at the executive residence of the White House was renovated.[621] Walters testified construction workers were always escorted by a National Park Service staff member, acting as a construction supervisor, and a Secret Service member.[622] Contractors were told not to move anything themselves, even furniture or something as inconsequential as a trash can, but instead to have Executive Residence staff move it.[623]

Assistant Chief Usher Dennis Freemyer was in charge of the White House renovations.[624] Freemyer said that with the exception of an office in the basement, construction workers were

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[617] Walters 1/26/96 GJ at 21.

[618] Id. For example, gifts the First Family received would be in that room until a decision was made about whether the gift would be taken by the archives or given to a school as charity. Walters 1/26/96 GJ at 18.

[619] Id. at 17-18. During July and August 1995, there were different numbers of tables in Room 319A. Id. at 20.

[620] See id. at 17.

[621] Freemyer 2/12/96 Int. at 2. The renovation began on July 23, 1994.

[622] Walters 1/26/96 GJ at 41-42.

[623] Id. at 52.

[624] Freemyer 2/12/96 Int. at 1-2.

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always escorted by a Secret Service officer.[625] In August 1995, Freemyer would inspect work in progress on the White House's third floor daily, sometimes more than once.[626] Freemyer said he never saw a worker unescorted in Room 319A or any other room.[627] Workers were only allowed to bring tools, not packages, into the residence.[628] Freemyer said it was not possible for a worker to have brought in any documents.[629] Workers were not allowed to touch or move anything.[630] If something was in the way, a National Park Service member or Executive Residence staff moved it.[631] Executive Residence staff could not move something without permission from Freemyer or someone with higher authority.[632]

Freemyer said that approximately a month before the Clintons' Wyoming summer vacation, he decided to run certain air conditioning and heating ducts through a closet in Room 323 instead of through an adjacent bathroom.[633] In mid-July 1995, Freemyer asked Carolyn Huber if he could use the closet, and she told him she would have to check with Mrs. Clinton.[634] A day or two later, he asked Capricia Marshall who told him he could use the closet.[635] Freemyer

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[625] Id. at 3.

[626] Id.

[627] Id. at 5.

[628] Id.

[629] Id.

[630] Id.

[631] Id.

[632] Id. at 6.

[633] Id.; see Walters 1/26/96 GJ at 28-29.

[634] Freemyer 2/12/96 Int. at 6.

[635] Id. at 6-7.

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said he first checked the closet on August 15, but it was locked.[636] Marshall told him she would have it unlocked.[637] On August 16 the closet was still locked.[638] He again contacted Marshall.[639] He checked again on August 17 and the closet was still locked;[640] he called Marshall again.[641] Finally, the morning of August 18, the closet was unlocked and empty. Freemyer thought Marshall told him she emptied the closet.[642] Freemyer said work on the closet occurred on August 18, 1995.[643]

c. Evidence Relating to Mrs. Clinton's Conduct in July 1995.

Freemyer said Mrs. Clinton began working on her book in Room 323 in June 1995.[644] In July and August 1995, she worked daily in Room 323, though the time she spent in there varied.[645] She kept the door closed most of the time because of noise.[646] Typically, there was someone in the room with her.[647]

At the same time, the House Banking Committee was conducting hearings on Whitewater-related matters. The FDIC Inspector General also released his report of

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[636] Id. at 6. The usher's office maintains keys to all the executive residence locks, including Room 323's closet. Walters 1/26/96 GJ at 60.

[637] Freemyer 2/12/96 Int. at 6.

[638] Id.

[639] Id.

[640] Id.

[641] Id.

[642] Id. at 7.

[643] Id. at 6.

[644] Id. at 5.

[645] Id.

[646] Id.

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investigation on alleged conflicts of interest by Rose for its representation of failed insured depository institutions, including Madison Guaranty Savings & Loan Association conservatorship.[648] On August 3, 1995, the Office of Inspector General of the Resolution Trust Corporation issued its report of investigation on possible Rose conflicts of interest, which included its representation of Madison Guaranty.[649]

On July 22, 1995, Mrs. Clinton and President Clinton were interviewed at the White House by the Office of the Independent Counsel. On July 11, 1995, Mrs. Clinton attended a "prep session" for this interview with two lawyers from the White House Counsel's office.[650]

At the same time, the Pillsbury Madison law firm was actively pursuing its investigation of Rose's representation of Madison Guaranty. On July 25, 1995, Bruce Ericson, a Pillsbury Madison attorney, asked David Kendall whether receivables from Madison Bank & Trust were collected by the spring of 1985, when Jim McDougal again retained Rose.[651] Kendall replied:

> McDougal complained about the bill and had refused to pay it. The bill had remained unpaid until the spring of 1985, when it was paid. Rose's trouble in collecting this receivable accounted for the Firm's reluctance to accept new business from McDougal unless he paid for it in advance, hence the retainer. . . . Kendall also does not think that McDougal paid it in 1983 (following the Giroir letter). Mrs. Clinton agrees. The bill probably remained unpaid until 1985.[652]

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[647] Id.

[648] Federal Deposit Insurance Corporation Office of Inspector General, Report of Investigation -- Alleged Conflicts of Interest by The Rose Law Firm (July 28, 1995).

[649] Resolution Trust Corporation, Office of Inspector General, Investigation Concerning Rose Law Firm (Aug. 3, 1995).

[650] The notes of that interview were later subpoenaed and were the subject of grand jury litigation in the Eastern District of Arkansas and the U.S. Court of Appeals for the Eighth Circuit. Those notes were finally ordered turned over to the Independent Counsel.

[651] Memo from Bruce Ericson, Pillsbury Madison attorney (July 31, 1995).

[652] Id. Reference is also made to this conversation in the Pillsbury Madison & Sutro LLP Report on the Representation of Madison Guaranty Savings & Loan by the Rose Law Firm:

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Three witnesses testified that in July 1995, they saw Mrs. Clinton carrying a box possibly containing billing records. One individual, a confidential witness (CW) [653] who is employed at the White House,[654] testified about a brief encounter with Mrs. Clinton in July 1995 while with two construction workers on the residence's third floor.[655] By reviewing employment records, CW narrowed the date to either July 9, 10, or 11, 1995.[656] CW also reviewed construction records for July 1995 and said work performed on those dates was consistent with CW's memory of work performed in the area.[657]

That day, CW recalled two construction workers[658] on the residence's third floor to install electrical and vent ducts in the linen room, Room 314, and in the attic above corridor 334.[659] CW encountered Mrs. Clinton in a doorway connecting a hall to the service elevator and stairs to the second floor.[660] The doorway is across the main corridor from Mrs. Clinton's office. Mrs. Clinton was "comfortably" carrying a brown cardboard box in her arms.[661] CW noticed that

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Prepared for Resolution Trust Corporation 6, n.18 (Dec. 28, 1995).

[653] To obtain this witnesses' information, the Office of Independent Counsel promised this witness that his/her identity would remain confidential unless required in a court proceeding.

[654] CW 8/15/96 GJ at 2.

[655] Id. at 5.

[656] Id. at 13-14.

[657] Id. at 14.

[658] Id. at 12. While he/she could not remember their names, CW thought one of the workers was in a supervisory or foreman position. Id.

[659] Id. at 6.

[660] Id. at 7-8.

[661] Id. at 8-9. CW described the dimensions of the box as about 12" x 16" x 6". CW 6/19/96 Int. at 3.

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inside the box was a stack of papers "coiled or rolled up into a -- what appeared to be a tube."[662] One end of the papers stuck out.[663] The papers were an off-white color, slightly discolored due to age, and the edges appeared curled, as if used.[664]

CW was asked to compare the appearance of the papers CW saw then with the billing records shown to CW rolled up vertically.[665] CW testified that the rolled up billing records looked like what the witness saw, including the papers' thickness.[666] Although CW did not see any writing on the papers Mrs. Clinton was carrying, CW's "impression" was they were engineering or technical drawings, given CW's background working with blueprints or engineering drawings.[667]

The encounter with Mrs. Clinton was very brief.[668] CW held the door for Mrs. Clinton to pass through.[669] CW thought Mrs. Clinton was going downstairs.[670] The only other person CW told about this brief encounter with Mrs. Clinton was CW's spouse that evening.[671]

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[662] CW 8/15/96 GJ at 9.

[663] Id.; CW 6/19/96 Int. at 3.

[664] CW 8/15/96 GJ at 10.

[665] Id. at 10-11.

[666] Id. at 11.

[667] Id.

[668] Id. at 12.

[669] Id. at 15.

[670] Id. at 18.

[671] Id. at 13. The Independent Counsel interviewed CW's spouse. CW's spouse said CW mentioned over dinner an incident that occurred that day at work. CW's spouse remembered the discussion because it was unusual for CW to discuss work at home. CW told CW's spouse that CW and two construction workers encountered Mrs. Clinton who had her arms full. CW did not tell CW's spouse what Mrs. Clinton was carrying. CW's Spouse 6/21/96 Int. at 1.

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David Parker[672] may have been one of the workers CW recalled being present on the residence's third floor. While with a White House employee and another worker,[673] Parker said he saw Mrs. Clinton coming upstairs to the third floor with a cardboard box.[674] He said they held the door open for her and she walked through.[675] Parker thought this encounter occurred in July 1995.[676] Shown a copy of the billing records rolled up, Parker said they looked like his renovation work drawings.[677] Parker could not explain why Mrs. Clinton had renovation plans, because access to those plans was closely controlled and copies had to be signed out.[678]

Finally, construction worker William Fowble remembered seeing Mrs. Clinton carrying a cardboard box on the residence's third floor.[679] He was working in the attic above the North Portico hall when he saw her walking from the third floor main corridor into the North Portico hall.[680] Fowble described the box as not very large, so Mrs. Clinton could easily carry it.[681] He

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[672] Parker was the Foreman on the heating, ventilation and air conditioning project at the White House since July 1994. Parker 2/20/96 Int. at 1.

[673] Parker did not remember the name of either the White House employee or the worker. Parker 6/25/96 Int. at 1.

[674] Id.

[675] Id.

[676] Id. at 2.

[677] Id.

[678] Id.

[679] Fowble 7/1/96 Int. at 1. William Fowble was also a Foreman involved with the renovation of the White House Heating, Ventilation, Air Conditioning ("HVAC") systems in 1995.

[680] Id. Fowble thought that John Morris, Mark Hutchison, and possibly Randy Ramey, were working with him in or around the attic. Id. The Independent Counsel interviewed Morris who thought he might have been in the attic with Fowble when he saw Mrs. Clinton, but he did not see Mrs. Clinton himself. Morris 7/1/96 Int. at 1. The Independent Counsel also interviewed Hutchison, who said he was in the attic working with Fowble when Mrs. Clinton was seen by others, but he never saw her. Hutchison 7/2/96 Int. at 1. The Independent Counsel determined

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did not see what was in it.[682] Using work schedules from Capitol Mechanical Contractors, Fowble said he was working in the attic on July 8 or 9, 1995.[683]

d. Documents from Foster's Office.

Hubbell testified he gave the billing records to Foster after he reviewed them in 1992.[684] Boxes of documents were removed from Foster's White House office after his death and placed in the closet in White House residence Room 323 before being given to Williams & Connolly. The Office of the Independent Counsel, therefore, investigated whether the billing records had been in Foster's office while he was alive and then moved to the residence after his death.

Huber was questioned about documents transferred from Foster's office, after his death, to the residence. She testified that on July 22, 1993, Maggie Williams contacted her at Mrs. Clinton's request to find a place to store Foster's documents.[685] Williams and a "young man" brought a box to the residence's third floor, where Huber locked it in Room 323's closet with the Clintons' personal records.[686] Huber did not know if the billing records were in this box because she did not know what was in it.[687]

Gary Williams, plumbing foreman at the White House, testified he saw a box in Room

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Ramey was not working on the HVAC project then, therefore he was not interviewed.

[681] Fowble 7/1/96 Int. at 1.

[682] Id.

[683] Id. at 2-3.

[684] Senate Whitewater Comm. Hearing, supra note 408, at 43 (Feb. 7, 1996) (testimony of W. Hubbell). Hubbell was also asked whether the billing records could have been in Foster's office in the White House while he was alive. Hubbell testified he did not know, but said, "Yes, they could have been." Id. at 53 (testimony of W. Hubbell).

[685] Huber 1/16/96 GJ at 85.

[686] Id.

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323's closet labeled with Vince Foster's name.[688] Williams's records show he repaired a shower in the bathroom of residence Room 324 on August 25, 1993.[689] Williams needed access to the shut-off valve located in Room 323's closet.[690] The closet was locked and the usher's office contacted Huber to unlock it.[691]

Inside Williams noticed two or three boxes like those for copier paper stacked in the closet.[692] Williams had to move the boxes to reach the access panel.[693] The top box had "Vincent Foster Jr." written on it in black magic marker.[694] Williams did not look inside the box but he testified there was some weight to it.[695] Williams described the box as tattered and old, whereas the other boxes were white and new.[696]

On November 2, 1993, Williams again went into Room 323's closet.[697] The closet was locked and the usher's office had to contact Huber to unlock it.[698] Williams testified boxes in the

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[687] Id. at 86.

[688] G. Williams 8/15/96 GJ at 9.

[689] Repair records of Gary Williams (Aug. 25, 1993) (Doc. No. MGSL-FR-00000027).

[690] G. Williams 8/15/96 GJ at 7; G. Williams 2/26/96 Int. at 3.

[691] Williams 8/15/96 GJ at 7.

[692] Id. at 8-9.

[693] Id. at 9.

[694] Id. In his interview with the Office of the Independent Counsel, Williams remembered the name "Vince Foster" was printed on the box, but was not positive "Jr." was on the lid. Williams 2/26/96 Int. at 3.

[695] Williams 8/15/96 GJ at 9.

[696] Id. at 16.

[697] Id. at 11.

[698] Id.

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closet were the same as during his August visit.[699] Williams told Dennis Freemyer, Deputy Usher, about seeing the box with Foster's name on it after the billing records turned up in the White House.[700] Williams told Freemyer about it because Williams was concerned his prints would be found on the box.[701] Freemyer confirmed Williams told him this.[702]

Mrs. Clinton was also asked if the billing records were originally in Foster's office. She testified she did not know where the billing records came from.[703] Mrs. Clinton also testified: "I have no reason to believe that those documents were in his office and [I] have not heard anyone who has said that they were."[704]

e. Mrs. Clinton's Testimony about Billing Records Found in Room 319A.

Mrs. Clinton could not explain how the billing records got to the White House residence. She testified as follows:

> Q. Do you have any idea at all how the documents that were produced to us on January 4, 1996 . . . found their way into the residence?
>
> A. I don't have any direct knowledge. I can only speculate, like everybody else, and I can only speculate that somehow those documents were stuck in a box that was put on one of those moving vans and moved up here, and it was not a box that was either labeled correctly or that Mrs. Huber got to or that she had any reason to believe contained anything of importance. And that in her continuing efforts, in addition to complying with subpoenas, to unpack things and to organize things and to lay things out, that this document appeared out of a box. It may have been moved from

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[699] Id. at 11-12.

[700] Id. at 13-14.

[701] Id. at 14.

[702] Freemyer 7/23/96 Int. at 2.

[703] H. Clinton 1/26/96 GJ at 105.

[704] Id. at 130.

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box to box or from place to place until she finally saw it in -- whenever she found it in the book room. But even then, she apparently did not recognize what it was. So it must not have been easily identified, because she is familiar with billing records; she's familiar with computer runs; and she's a very busy woman and very hard working. And so it was thrown into a box, and it sat there until she got around to going through those boxes. And that is my best judgment about what is likely to have happened that produced this document.

Q. You understand that that's inconsistent with her testimony, to the extent she has testified that she first found that document on a table in the book room in July or August of 1995; that she didn't put it there; and that she had never seen it before.

A. I am only saying that there were many boxes that were constantly being unloaded, things were being moved around. During construction, things were being moved around. I have no reason to doubt Mrs. Huber's testimony that this registered on her for the first time in the book room, but I think there are many explanations, with all of this movement of paper and boxes, as to how something that we did not know was there could have appeared. But that is only my judgment. I do not have any information or firsthand knowledge that I can share with you.[705]

Mrs. Clinton admitted she got a grand jury subpoena in May 1994 demanding production of documents relating to Madison Guaranty by June 28, 1994.[706] She also admitted the billing records produced to the Independent Counsel on January 5, 1996 were required to be produced by that subpoena.[707]

E. Evidence Regarding Discovery of Rose Billing Records in the White House.

This section details Carolyn Huber's testimony about discovering the billing records in the White House and their subsequent handling by the Clintons' personal attorney, David Kendall.

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[705] Id. at 128-29.

[706] Id. at 14-15; see Grand Jury Subpoena No. 320 (E.D. Ark. May 24, 1994).

[707] H. Clinton 1/26/96 GJ at 15.

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1. Carolyn Huber's Initial Discovery of Billing Records.

Before finding billing records in her office in January 1996, Carolyn Huber had previously "discovered" the records in the White House residence in August 1995. Huber testified the first time she saw the billing records was in Room 319A of the White House's third floor residence.[708]

At some point the first two weeks of August 1995, Huber went to Room 319A to retrieve newspapers and magazines so she could assign a volunteer to catalogue them.[709] A single table, approximately four or five feet by eight feet, was located in the center of Room 319A.[710] The table was cluttered with various "knickknacks" of gifts and memorabilia, and a stack of books.[711] Huber noticed folded documents on the table's corner.[712] Without looking at the documents, Huber put them in a box already on the table.[713] Huber recounted:

> A. They were folded over, so I didn't open them up to look. So I didn't even -- when I picked them up, I didn't know what it was. So I just threw it in the box and took it to my office. I thought it was something to be filed -- that would need filing.
>
> . . . .
>
> Q. So you're saying you didn't look at it?

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[708] Huber 1/16/96 GJ at 17-18; Huber 1/17/96 Senate Whitewater Comm. Depo. at 51-52; Senate Whitewater Comm. Hearing, supra note 408, at 8-9 (Jan. 18, 1996) (testimony of C. Huber).

[709] Huber 1/16/96 GJ at 17-18; Huber 1/17/96 Senate Whitewater Comm. Depo. at 51-52; Senate Whitewater Comm. Hearing, supra note 408, at 8-9 (Jan. 18, 1996) (testimony of C. Huber).

[710] Huber 1/16/96 GJ at 90-91.

[711] Id. 19-20.

[712] Id. at 20.

[713] Id. at 20, 99-100.

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A. No, I did not. If I would have looked at it, I would have turned it in that day.[714]

In her Senate testimony, Huber said she did not look at the documents, but acknowledged she recognized them as billing memos:

Q. Did you notice as you [placed the records in a box] what kind of documents they were?

A. I just thought it was -- it looked sort of like billing memos, but I didn't open it. From being in a law firm, I thought it kind of looked like them, but I didn't open it so I couldn't tell that it really was.

Q. So from your experience at the law firm, you did have the impression that they looked like the kind of documents that would be billing memos?

A. Kind of, yes.

Q. But you didn't actually open them and inspect them?

A. No.[715]

Huber said papers were not usually left on this table in Room 319A, that seeing these documents was the first time she had ever seen papers on the table.[716] Before finding these records, Huber thought she had most recently been in Room 319A less than a week before.[717] She had not seen any documents on the table then.[718]

After putting the records in a box and gathering up other items, Huber contacted the

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[714] Id. at 20-22.

[715] Senate Whitewater Comm. Hearing, supra note 408, at 16-17 (Jan. 18, 1996) (testimony of C. Huber). Sherry Ryan, a former Rose clerk, said in an interview with the Office of the Independent Counsel that Huber was very knowledgeable about billing matters and it was her opinion that if Huber had found firm billing memoranda, she would have recognized them. Ryan 5/9/96 Int. at 3.

[716] Huber 1/16/96 GJ at 21.

[717] Id. at 94-95.

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usher's office to have four boxes moved from Room 319A to her White House East Wing office.[719] These boxes were moved to her office and left on the floor.[720] Until shelves could be installed, Huber had a large table delivered to her office.[721] These boxes were placed under the table where they stayed until January 1996.[722]

2. Huber's Re-Discovery and Realization of the Billing Records.

On January 3, 1996, the shelves Huber wanted in her office were installed.[723] On January 4, the table covering the boxes brought to her office in August 1995 was removed.[724] Huber removed the boxes from the floor.[725] Huber then removed the billing records from the box she had placed them in back in August 1995 and saw the first page.[726] She noticed the documents were Madison Guaranty billing records.[727] After realizing she had billing records, she contacted David Kendall.[728] She testified she did not contact Mrs. Clinton because Newsweek magazine was interviewing her then.[729]

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[718] Id. at 95.

[719] Id. at 100-01. Freemyer vaguely remembered Huber asking him sometime in August 1995 for help moving some boxes from Room 319A to her office in the East Wing. Freemyer 2/12/96 Int. at 8.

[720] Huber 1/16/96 GJ at 101.

[721] Id.

[722] Id. at 102.

[723] Id. at 18.

[724] Id.

[725] Id.

[726] Id. at 102.

[727] Id.

[728] Id.

[729] Id. at 69.

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a. Kendall, Schuelke, and Sherburne Are Notified of the Billing Records' Discovery.

Kendall testified he was in a meeting at the White House on January 4, 1996 when he received a note from an usher asking him to see Huber before he left.[730] Kendall arrived at Huber's East Wing office around 12:45.[731] Huber handed him the documents and told him she thought they were Rose billing records for Madison Guaranty.[732]

Later that day, Kendall contacted Henry F. Schuelke III, Huber's attorney, and told him Huber had apparently found Rose billing records for Madison Guaranty[733] and they needed to decide how to produce them.[734] Kendall also spoke with Jane Sherburne, working with the Office of White House Counsel.[735] Kendall told her Huber had discovered Rose billing records for Madison Guaranty, which Huber said contained Vince Foster's handwriting.[736] He also told her they needed to meet at 4:30 p.m. to review them and decide how to produce the records.[737]

b. Kendall, Schuelke, and Sherburne Review Records with Huber.

Around 5:00 p.m., Kendall, Schuelke, and Sherburne arrived at Huber's East Wing Office.[738] Huber told them how she originally found the records several months before, and how

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[730] Kendall 2/2/96 GJ at 11.

[731] Id.

[732] Id. at 11-12.

[733] Id. at 15-17; see Schuelke 2/13/96 GJ at 9-10.

[734] Kendall 2/2/96 GJ at 16.

[735] Id. at 15.

[736] Id. at 20; Sherburne 2/1/96 GJ at 80-81.

[737] Kendall 2/2/96 GJ at 20.

[738] Id. at 22; Schuelke 2/13/96 GJ at 16; Sherburne 2/1/96 GJ at 81.

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she had realized she had the billing records earlier that day.[739] Because Huber's office was too small to review the records, they went to a larger one down the hall where Huber could sit at a desk with attorneys leaning over her as she went through the documents page by page.[740]

While reviewing the records, the attorneys asked Huber questions. Given her prior experience at Rose, they asked her if the date of February 12, 1992 on the "Client Billing & Payment History" document meant it was printed that date.[741] She thought that was correct.[742] They also asked whether she could identify handwriting on the records.[743] She told them the handwriting in red ink looked like Vince Foster's.[744] She also identified some handwriting as

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[739] Schuelke testified Huber told them that about three to six months prior, as she was gathering up various materials from the work room on the third floor of the Clintons' residence, she remembered picking up papers and throwing them into a box, along with other things she had collected off the table. Schuelke 2/13/96 GJ at 18-19. This box, along with other boxes, were moved to her office for her to later catalogue. Id. at 19. She placed all the boxes underneath a table in her office where they remained until that morning, January 4, 1996. Id. That morning, she had the table removed from her office and began to organize her office. Id. She picked up the records from the box and for the first time, looked at them and realized they were Rose billing records on Madison Guaranty. Id.

Kendall testified that Huber showed them the records and explained they had come from a box of "odds and ends" kept under a table. Kendall 2/2/96 GJ at 23.

Sherburne testified that Huber showed them the records and the box where she kept them under a table in her office. Sherburne 2/1/96 GJ at 81. She had placed the records in a box with other "junk" brought over to her office. Id. at 90-91. She had placed the boxes under a table in her office and had not touched them again until the day the table was removed. Id. at 91. Sherburne remembered Huber saying she recognized them as Rose material, but Huber did not say one way or the other whether she recognized them as billing records. Id. at 91, 93.

[740] Kendall 2/2/96 GJ at 23-24; Schuelke 2/13/96 GJ at 22-23; but see Sherburne 2/1/96 GJ at 87 (Sherburne did not remember Huber reviewing the records page by page).

[741] Schuelke 2/13/96 GJ at 24.

[742] Id.

[743] Id.; Kendall 2/2/96 GJ at 24.

[744] Schuelke 2/13/96 GJ at 24-25.

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Mrs. Clinton's and some as Rose accounting personnel's.[745]

The attorneys went out to the hallway and Sherburne raised the question of whether they should handle the records, because the Office of the Independent Counsel might want to fingerprint them to find out who had them before Huber.[746] Kendall said they had already touched the documents and they had to make copies to review them, and to give copies to the Senate and the RTC.[747] Schuelke said he had an obligation to his client to review the records to provide competent representation, even if that created additional fingerprints.[748] Sherburne agreed with Kendall and Schuelke.[749]

None of the attorneys contacted the Independent Counsel or the FBI about handling the records. Schuelke said that although he was not an expert, because he was an Assistant United States Attorney in the District of Columbia for seven years[750] he thought he would not obliterate a fingerprint on paper by smudging it.[751] Kendall, a criminal defense attorney,[752] also did not think the number of people who handled the records would interfere with existing fingerprints.[753] He also thought they had to review the records and have copies made.[754] They believed that the

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[745] Id. at 25; Kendall 2/2/96 GJ at 24.

[746] Sherburne 2/1/96 GJ at 118-19; Kendall 2/2/96 GJ at 27; Schuelke 2/13/96 GJ at 25-26.

[747] Kendall 2/2/96 GJ at 27-28.

[748] Schuelke 2/13/96 GJ at 27.

[749] Sherburne 2/1/96 GJ at 96-97.

[750] Schuelke 2/13/96 GJ at 6.

[751] Id. at 28-30.

[752] Kendall 2/2/96 GJ at 6.

[753] Id. at 45-46.

[754] Id. at 46.

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possibility of altering existing fingerprints should not prevent them from doing what they felt they had an obligation to do.[755] They did not wear gloves; nor did Kendall consider having the Independent Counsel produce copies to them.[756]

They left Huber's office for the New Executive Office Building, where they intended to make copies on a color copier.[757] Huber and Sherburne made two copies of the records.[758] Schuelke left before copying was done.[759]

Kendall took the original records and one copy with him back to his office, where he locked the original in a drawer and left the copy with staff to make six or seven more color copies.[760] Once copies were made, Marc Rolfe, a Williams & Connolly paralegal, handled the "original" records to copy check every page.[761]

F. The Office of the Independent Counsel Asked the FBI to Conduct Forensic Analyses of the Billing Records.

The Office of the Independent Counsel, with the FBI Laboratory's help, conducted a thorough analysis of the billing records for physical evidence of who handled the records, and what was done with them before they were produced.

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[755] Id. at 48.

[756] Id. at 50-51.

[757] Sherburne 2/1/96 GJ at 100-01.

[758] Id. at 101-02.

[759] Schuelke 2/13/96 GJ at 56.

[760] Kendall 2/2/96 GJ at 39-40.

[761] Id. at 45.

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1. Fingerprint Analysis Disclosed Mrs. Clinton's and Vince Foster's Prints.

The FBI Laboratory conducted a fingerprint analysis of the billing records. The FBI Laboratory looked for the following individuals' fingerprints:

Mildred Alston	Vincent Foster Jr.	Bruce Lindsey	Henry Schuelke
Robert Barnett	Deborah Gorham	James Lyons	Nicole Seligman
Michael Berman	James Hamilton	Richard Massey	Jane Sherburne
Diane Blair	Sandra Hatch	Capricia Marshall	Clifford Sloan
James Blair	Vera Hitt	Nancy McFadden	Gary Speed
Barbara Bonner	Webster Hubbell	Thomas McLarty	Amy Stewart
Charles Burton	Carolyn Huber	Richard Mintz	Melba Thomas
Thomas Castleton	Harold Ickes	Stephen Neuwirth	Susan Thomases
Lorraine Cline	Charles Jennings Sr.	Bernard Nussbaum	Patsy Thomasson
Hillary Clinton	Deborah Johnson	Betsy Pond	Linda Tripp
William Clinton	David Kendall	Marc Rolfe	Gena Wilfong
Helen Dickey	William Kennedy	Mary Russell	Margaret Williams
Tammy Edwards	Evelyn Lieberman	Sherry Ryan	Betsey Wright
Laura Eschbacher			

The FBI laboratory developed fifty-six fingerprints, palm prints or impressions. Fifty-four of these prints matched known exemplars, whereas two fingerprints remain unidentified.[762] The FBI found: one palm print of Mildred Alston;[763] two fingerprints of Hillary Rodham Clinton;[764] four fingerprints of Vincent W. Foster Jr. (deceased);[765] three fingerprints of Sandra

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[762] Federal Bureau of Investigation Laboratory Reports (Mar. 21, 1996 & June 3, 1996).

[763] Federal Bureau of Investigation Laboratory Report at 2 (Mar. 21, 1996). Alston's palm print was identified on Rose Billing Invoice for Madison Guaranty Savings & Loan (May 8, 1985) (Doc. No. DEK014936).

[764] Federal Bureau of Investigation Laboratory Report at 3 (Mar. 21, 1996). Mrs. Clinton's fingerprints were identified on Rose Billing Invoice for Madison Guaranty Savings & Loan (May 8, 1985) (Doc. No. DEK014945) and Rose Billing Records (May 9, 1985) (Doc. No. DEK014950).

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Hatch;[766] six fingerprints of Carolyn Huber;[767] thirty-six fingerprints and one palm print of Marc Rolfe;[768] and one fingerprint of Henry F. Schuelke III.[769] The FBI Laboratory identified some of the red handwritten notations on the billing records as Foster's.[770]

2. Rose Employees Hatch and Alston Explained Their Fingerprints.

Sandra Hatch, a Rose litigation section file clerk during the 1992 Presidential campaign, initially told the Office of the Independent Counsel she did not remember ever seeing the billing

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[765] Federal Bureau of Investigation Laboratory Report at 3 (Mar. 21, 1996). Foster's fingerprints were identified on Rose Billing Records (July 9, 1985) (Doc. Nos. DEK014969), Rose Billing Records (Oct. 18, 1985) (Doc. No. DEK014990), Rose Billing Records (Aug. 22, 1985) (Doc. No. DEK014994) and Rose Billing Records (May 13, 1986) (Doc. No. DEK015030).

[766] Federal Bureau of Investigation Laboratory Report at 2 (June 3, 1996). Hatch's fingerprints were identified on Rose Client Billing and Payment History (run off date Feb. 12, 1992) (Doc. No. DEK015025).

[767] Federal Bureau of Investigation Laboratory Report at 3 (Mar. 21, 1996). Huber's fingerprints were identified on Rose Billing Records (May 8, 1985) (Doc. Nos. DEK014953), Rose Billing Invoice for Madison Guaranty Savings & Loan (Aug. 9, 1985) at 2 (Doc. No. DEK014978), Rose Billing Records (Aug. 9, 1985) (Doc. No. DEK014981), Rose Billing Invoice for Madison Guaranty Savings & Loan (Sept. 28, 1985) (Doc. No. DEK014987), Rose Billing Invoice for Madison Guaranty Savings & Loan (Sept. 12, 1985) (Doc. No. DEK014992) and Rose Billing Invoice (handwritten attachment) (Doc. No. DEK014998).

[768] Federal Bureau of Investigation Laboratory Report at 2 (Mar. 21, 1996). Rolfe's fingerprints and palm print were identified on Rose Client Billing & Payment History (run off date Feb. 12, 1992) (Doc. No. DEK014936), Rose Billing Records (May 8, 1985) (Doc. No. DEK014949), Rose Billing Records (July 15, 1985) (Doc. No. DEK014976), Rose Billing Records (Aug. 9, 1985) (Doc. No. DEK014985), Rose Billing Invoice (Jan 21, 1986) (Doc. No. DEK015010), Rose Billing Invoice (Jan. 30, 1986) (Doc. No. DEK015011), Rose Billing Records (Jan. 21, 1986) (Doc. No. DEK015012), Rose Billing Invoice (Dec. 12, 1986) (Doc. No. DEK015045), and Rose Billing Records (Mar. 19, 1987) (Doc. No. DEK015049).

[769] Federal Bureau of Investigation Laboratory Report at 2 (Mar. 21, 1996). Schuelke's fingerprint was identified on a yellow post-it note on a Rose Billing Invoice for Madison Guaranty Savings & Loan (Sept. 12, 1985) (Doc. No. DEK014942).

[770] Federal Bureau of Investigation Laboratory Report at 7 (Sept. 10, 1996). Foster's writing was identified on Rose Billing Invoice and Records for Madison Guaranty Savings & Loan (Sept. 12, 1985) (Doc. Nos. DEK014941 through DEK014942).

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records.[771] She was re-interviewed when the FBI found three of her fingerprints on one of the billing records.[772] After reviewing the page with her fingerprints, Hatch still did not remember seeing or handling the document, but said she could have carried records between an attorney's office and accounting or to or from Melba Thomas, who operated the large copier.[773] Hatch testified in her Senate deposition that she had no specific recollection of handling or photocopying billing records.[774]

The palm print of Mildred Alston, Mrs. Clinton's former secretary at Rose and Special Assistant for Personal Correspondence at the White House, appears on the first page of the "Client Billing & Payment History" document.[775] Alston testified she had never seen a collection of documents like the billing records produced while at Rose or the White House, and she did not remember handling anything resembling the billing records at the White House.[776] When told in her interview with the Office of the Independent Counsel that her palm print was found on one of the records, she said she must have touched the document at Rose.[777]

3. Mrs. Clinton's Explanation of Her Fingerprints.

Mrs. Clinton testified in January 26, 1996 about the billing records:

Q. Now, Mrs. Clinton, I would ask you if you recall at any time receiving

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[771] Hatch 5/10/96 Int. at 1.

[772] See Federal Bureau of Investigation Laboratory Report at 2 (June 3, 1996). Hatch's fingerprints were identified on Rose Client Billing and Payment History (run off date Feb. 12, 1992) (Doc. No. DEK015025).

[773] Hatch 5/28/96 Int. at 1.

[774] Hatch 6/6/96 Senate Whitewater Comm. Depo. at 38.

[775] Federal Bureau of Investigation Laboratory Report at 2 (Mar. 21, 1996).

[776] Alston 4/16/96 GJ at 42.

[777] Alston 5/30/96 Int. at 1.

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these documents.

A. I think it is possible that I did receive some or all of these documents at some point.

Q. And could you tell us when that might have been.

A. I believe it is probably during the February--March 1992 period of time.

Q. Do you know if you had received these at the firm?

A. I don't believe so, because I was rarely at the firm during 1992. But it is possible that I did.

Q. Would you have received them from Mr. Foster personally, or would they have come through some other person?

A. I don't recall that . . . .

Q. And would you have gone over these if you had received them?

A. I don't know that I would have gone over them. There was only one area of interest to the press, and that was the representation on behalf of Madison [Guaranty] before the securities department. So if I received them, that is probably what I would have been interested in.

Q. I know we're talking in "ifs" here --

A. Yes, we are.

Q. -- but do you remember actually receiving these at some point?

A. I do not remember that, but I think it is entirely possible that I did during that period of time.

. . . .

Q. Now, if you received these, what would you have done with them?

A. If I did, I would have reviewed them, either with Mr. Foster, conceivably Mr. Hubbell, or on my own. And then I would return them, because they were the property of the Rose Law Firm, and there was some considerable concern on the part of the firm that documents relating to the clients of the

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Rose Law Firm not leave the Rose Law Firm or be given to people outside those who were associated with the Rose Law Firm.[778]

In a later deposition for the Little Rock grand jury, when she knew her fingerprints were on the records, Mrs. Clinton acknowledged touching the billing records during the campaign:

Q. Now, you have said, though, that in 1992 you did have access to the billing records, such that you had prepared your campaign statement. . . .

. . . .

Q. And I can tell you, of course, that on the billing records you produced, not only were there some of your prints, but also Mr. Foster's prints were on those records. So, my question to you would be in that regard is, when else could you have touched those besides 1992? Did you touch them in '93? 94? 95?

A. I believe I touched them in 1992. I believe that at some point in those early months when people were coming up with all kinds of questions, I saw -- I can't tell you I saw all of them. I just don't remember seeing all of them. But I certainly saw billing records at some point in '92. And I, I can only speculate . . . . that maybe on a quick stop at my office, which I don't remember, or maybe being sent to my home, or maybe being delivered by Mr. Foster I had a chance to see the billing records.[779]

Mrs. Clinton explained that to draft a statement about her Madison Guaranty work,[780] she either looked at the billing records or heard from someone who had looked at them that the total billed for all Madison Guaranty matters was $21,202.25:[781]

Q. In other words, on the client billing and payment history, we find the $21,202.25. Now, in 1992, when you prepared this statement, how did you go about that?

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[778] H. Clinton 1/26/96 GJ at 28-31.

[779] H. Clinton 4/25/98 Depo. at 123-25.

[780] See Hillary Rodham Clinton Statement regarding Madison Guaranty Savings & Loan (prepared in 1992) (Doc. Nos. DEK009889 through 890).

[781] H. Clinton 1/26/96 GJ at 54-55.

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A. Well, I thought a lot about this . . . because I've had to sort of reconstruct what probably happened, since I don't have any vivid memory of actually doing it. I do know that this was typed on my daughter's home computer. So, I obviously prepared and typed it myself at some point in February, March, April, I don't know when, in 1992, when I was home for those very brief visits, when I came home off the campaign trail. You know, I went back and refreshed my memory about what was going on during that period, and from the New Hampshire primary of February 12th, 1992 until the California primary of June 2nd, there was, you know, all kinds of elections going on every week. So, this was typed on our home computer by me.

Q. And in typing that, did you have the billing records to assist you in putting the date down when you talked to McDougal and went by to see him at his office? As you see in the billing records, it says you had a conference with Jim McDougal on April the 23rd. Did you have that when you came up with this 21,000 figure?

A. I might have, or I might have gotten information from Vince Foster or Webb Hubbell, who I knew were reviewing the bills, since I've since learned that. I don't -- I don't know whether I had them in front of me at that time, or whether I had looked at them and made observations about them. But obviously I had the information that you refer to that was on the billing records.[782]

. . . .

Q. As you know, you have a specific date in here, April 23, 1985. You also have a specific dollar amount on the second page, the $21,202.25 figure. Would it be fair to say -- I'm just trying to get an idea -- do you think you remembered that date and those figures, or you must have had a document in front of you that had that date and that dollar figure?

A. Well, I obviously either had a document in front of me, and it very well could have been the billing records, or someone had gone through documents and was giving me information or giving me pieces of documents. I just don't recall now. I mean, it seems sensible that if I said to anyone you know, let me see what I can remember about this, that they would have sent me what they had, which was probably the billing records. And I was focused on, you know, a very narrow issue, which was, you know, how I got involved in the business and what I did. And so

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[782] H. Clinton 4/25/98 Depo. at 26-27.

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I didn't really spend a lot of time, I don't think, looking at a lot of detail. I was trying to answer those two particular issues.[783]

G. Billing Records Found in Foster's Attic -- July 1997.

The Independent Counsel received a second set of Madison Guaranty billing records on July 31, 1997 from Vincent Foster's widow, Lisa Foster Moody.[784] They were found in Foster's briefcase in the attic of his house in Little Rock, Arkansas in July 1997.

This set of billing records was identical to the set produced by the White House, except for certain writings and marks, and with one other significant exception. There was one additional bill in the Foster attic set, a copy of an "old bill" from Rose to the Madison Bank & Trust, marked paid. The briefcase also contained other Rose and campaign documents likely created or collected in 1992. This section summarizes evidence about the discovery of this second set of records, their content, and forensic analysis.

1. Discovery of Second Set of Rose Billing Records Relating to Madison Guaranty and Madison Bank & Trust.

Vince Foster's daughter, Laura, told investigators from the Office of the Independent Counsel that on the evening of July 23, 1997, she went into the attic of her mother's house to look for a box of memorabilia, including a letter from her father when she started college.[785] Foster had started looking for this box around Christmas 1993, and had been in the attic

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[783] Id. at 47-48.

[784] See Evidence Report OIC-35063-1B-1212 (Aug. 1, 1997) (showed property acquired July 31, 1997); Rose Billing Records produced from Vince Foster's attic (run off date Feb. 12, 1992) (Doc. Nos. 1180-00000250 through 364).

[785] L. Foster 8/12/97 Int. at 1.

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approximately six times since then.[786] She said the attic was used to store Christmas decorations, family items, and boxes put there when the family moved to Washington, D.C. in May 1993.[787] Foster said no boxes had been put in the attic after the family returned from Washington, D.C.[788]

On July 23, 1997, Foster again searched for the box of memorabilia.[789] In the attic's center was a big, black architect's desk.[790] Paintings leaned against the desk, and next to those was her father's briefcase.[791] She wanted to look through the briefcase for sentimental reasons, so she took it and the box she had been looking for down from the attic to her mother's bedroom.[792]

The briefcase contained message slips for her father and files she recognized as Rose files.[793] When she came across the Madison Guaranty billing records with Mrs. Clinton's name on them, she knew they were important.[794] When her mother came home, she told her what she had found, and her mother took the briefcase.[795]

The Office of the Independent Counsel interviewed Lisa Foster Moody, Foster's widow, about this. Moody said that she arrived home around midnight on July 23, 1997 to find her daughter in her bedroom sorting through pictures and other memorabilia from the attic.[796] Her

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[786] Id.

[787] Id.

[788] Id.

[789] Id.

[790] Id.

[791] Id.

[792] Id.

[793] Id. at 2.

[794] Id.

[795] Id.

[796] Moody 8/12/97 Int. at 1.

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daughter told her she had found her father's briefcase, which Moody recognized as the briefcase she gave him when he graduated from law school.[797] Moody opened the briefcase and briefly went through it.[798] She recognized the billing records' importance, but went to bed because it was late.[799]

The next morning, July 24, 1997, Moody went through the briefcase more carefully.[800] At about 10:00 a.m., she called her attorney, James Hamilton, and told him what she found.[801] Four days later, she went to the school where she taught and made copies of the documents.[802] After two days of making copies, she sent them to her attorney and kept the originals.[803]

Asked how the documents got in the attic, Moody explained that in late December 1992 or early January 1993, Foster packed his documents from Rose into boxes.[804] These boxes did not go to the attic, but to a storage shed rented by Moody's brother-in-law, John Tucker Morris.[805] Moody thought Foster put the briefcase in the attic.[806] Moody said the briefcase was not put in the attic after his death.[807] Her best guess was the briefcase was put in the attic shortly after the

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[797] Id.

[798] Id.

[799] Id.

[800] Id.

[801] Id.

[802] Id. at 2.

[803] Id. Moody did not wear gloves when making these copies. Id. at 2-3.

[804] Id. at 3.

[805] Id.

[806] Id.

[807] Id.

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1992 election.[808]

Moody clarified she was responsible for packing the family items in their move to Washington, D.C. in 1993.[809] Other than luggage, nothing from the attic went to Washington, D.C.[810] While the Foster family was in Washington, D.C., their Arkansas home was let.[811] Moody said other than an air conditioning repairman, no one outside the family had been in the attic since 1993.[812]

In response to a subpoena issued by the Independent Counsel, Moody searched the storage shed and a four-drawer filing cabinet in the attic which contained all the family tax records.[813] No additional responsive documents were produced.

a. Comparison of Billing Records Discovered in White House with Those Discovered in Foster's Attic.

The set of Madison Guaranty billing records found in Foster's attic differed from the records produced by David Kendall in January 1996 in four ways: 1) they did not contain any of red markings and handwriting identified as Foster's;[814] 2) they did not contain post-it notes like the White House's;[815] 3) there were some minor underlining and other marks not in red ink that

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[808] Id.

[809] Id.

[810] Id.

[811] Id.

[812] Id. at 4.

[813] Id. See Grand Jury Subpoena No. 1180 (E.D. Ark. Dec. 7, 1995).

[814] See Rose Billing Records produced from Vince Foster's attic (Doc. Nos. 1180-00000250 through 364).

[815] Id.

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did not appear on both sets of records;[816] and 4) more documents about Madison Guaranty and other related entities were found with them.

b. Mrs. Clinton's Testimony on the Billing Records in Foster's Attic.

In a deposition with the Office of the Independent Counsel in April 1998, Mrs. Clinton was asked what she knew about the billing records found in Foster's attic.

> Q. Now, do you know why Mr. Foster would have had these, all of these records in his briefcase, along with the only other set of the Rose Madison billing records ever found in captivity?
>
> A. I don't know. I think that knowing Vince, he was a very thorough person. He thought if you ever asked any questions, he'd want to try to answer them. That's the only explanation I can offer.
>
> Q. Well, you understand, we wanted these records for a long time and you through your counsel finally produced them. And we've never found the originals. And then we find a copy in Vince Foster's attic. It makes one wonder about is somebody trying to play hide-the-ball. And I wondered, did Mr. Foster ever tell you that he had a number of documents squirreled away somewhere?

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[816] These differences include: Rose Billing Records (July 9, 1985) (Doc. No. DEK014971), contained a written change in "amount to bill" for Rick Massey and a circle around the total time billed by all attorneys for the stock offering and limited partnership matters that did not appear on Rose Billing Records (July 15, 1985) (Doc. No. 1180-00000284); underlining of work performed by Massey and brackets around work performed by Massey and Mrs. Clinton on an August 9, 1985 Rose Billing Invoice for Madison Guaranty Savings & Loan at 2 (Aug. 9, 1985) (Doc. No. 1180-00000291), not on Rose Billing Invoice for Madison Guaranty Savings & Loan (Aug. 9, 1985) (Doc. No. DEK014978); the records from Foster's attic contained two copies of September 20, 1985 Rose Billing Invoices for Madison Guaranty Savings & Loan (Sept. 20, 1985) (Doc. Nos. 1180-00000299 through 300 and 301through 302); an arrow pointing to Mrs. Clinton's time entry of a "conference with W. Hubbell" on the stock offering matter, Rose Billing Records (Jan. 21, 1986) (Doc. No. 1180-00000324), not on Rose Billing Records (Jan. 21, 1986) (Doc. No. DEK015009); and an arrow pointing to Mrs. Clinton's time entry of a "response to auditor's request" and a half circle around two other time entries for Mrs. Clinton with descriptions of "Seth Ward" and "conference with and telephone conference with Jane Dickey regarding port" for the I.D.C. matter, Rose Billing Records (Mar. 28, 1986) (Doc. No. DEK015022) not on the records found in Foster's attic (Mar. 28, 1986) (Doc. No. 1180-00000337).

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A. No, he did not.[817]

2. Other Documents in Foster's Briefcase.

In addition to the second set of Madison Guaranty billing records and the December 1981 Bank of Kingston bill, Foster's briefcase contained other Rose and campaign documents. Three of these were relevant to the Independent Counsel's investigation because their content was probative of testimony provided by Mrs. Clinton and others during the investigation.

The briefcase contained a copy of a Rose bill to the Bank of Kingston dated July 30, 1982 for total fees and costs of $5,893.63.[818] The copy bore the handwritten word "paid" and the date October 23, 1984, reflecting payment of $5,000.00.[819] This document was not found in searches of Rose files from 1993 to 1997, even though it was a document normally kept by Rose.[820]

The briefcase also contained a five-page chronology of Rose's representation of Madison Guaranty.[821] The chronology starts April 3, 1981, with an entry about Jim McDougal's hiring of the firm to represent the Bank of Kingston, and ends February 21, 1990, with an Arkansas Gazette report about Latham's confession to falsifying bank records.[822] The chronology included the following entries:

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[817] H. Clinton 4/25/98 Depo. at 62.

[818] Rose Billing Invoice for Bank of Kingston (July 30, 1982) (Doc. No. 1180-00000249).

[819] Rose Billing Invoice for Bank of Kingston (July 30, 1982) (Doc. No. 1180-00000249). This copy also shows the handwritten allocation of attorney's fees based on $4,106.37, the amount left over after costs were subtracted from the amount paid. Id.

[820] R. Clark 12/2/97 GJ at 130-33.

[821] Chronology of the Rose representation of Madison Guaranty Savings & Loan (Mar. 26, 1992) (Doc. Nos. 1180-00000236 through 240).

[822] Id.

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07/30/82	Final bill of Rose Law Firm to Bank of Kingston (a/k/a Madison Bank & Trust) of $5,000 fees and $893 in costs (contains note in Giroir's hand: "Have Hillary bill with letter to McDougal -- will pay").
1983	Bank of Kingston final bill written off
10/23/84	$5,000 paid on Bank of Kingston bill
04/85	Latham, as Madison Guaranty's CEO, hired the Rose Law Firm to request an interpretative ruling of the S&L statutes from the S&L Administrator.[823]

Rose's Ronald Clark said the document was created on Foster's Rose computer, and printed March 26, 1992.[824] Finally the briefcase contained an original March 26, 1992 memorandum signed by Rick Massey discussing Rose's representation of Madison Guaranty before the ASD.[825]

In addition to the "paid" bill itself being found in Foster's briefcase - the only place it was ever found in this entire investigation - other documents reflect what occurred in February and March 1992. It would appear that initially, Foster reviewed the first bill to the Bank of Kingston, dated December 1981, along with Rose billing records for the representation of Madison Guaranty, all retrieved from remote storage. He made various markings on a copy of the bills in

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[823] Chronology of the Rose representation of Madison Guaranty Savings & Loan (Mar. 26, 1992) (Doc. Nos. 1180-00000236 through 237).

[824] Clark 12/2/97 GJ at 136-37. Clark identified the numbers that appear on the second page, "RLL1860.WP5" as a document number under the firm's computer system. Id. at 136. Clark was able to call up the document on Rose's system and determine the document was created for Foster by his secretary, Lorraine Cline. Id. The numbers on the second page, "032692," reflect the date the document was printed, and automatically change each time it is printed. Id. at 137. Clark was able to de-archive the document and print it. Id. at 136-37. His printed version had a date of "120197." Id. at 137; see Foster Chronology of the Rose Law Firm Representation of Madison Guaranty Savings & Loan (Mar. 26, 1992) (Doc. Nos. 1180-00000237 through 240).

[825] Memo drafted by Vince Foster, Rose attorney, to Rick Massey, Rose attorney re: his involvement in Rose's representation of Madison Guaranty (signed on Mar. 26, 1992) (Doc. Nos. 1180-00000233 through 235).

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red pen, including a note to Mrs. Clinton on the initial Bank of Kingston bill: "HRC, I believe there was a subsequent bill."[826] This would show that Foster did not then posses a copy of the "old bill" - the second bill dated July 30, 1982.

The chronology of "Madison Representation" found in Foster's briefcase had a computer print date of March 26, 1992. That chronology included the entry: "10/23/84 - $5,000 paid on Bank of Kingston bill." Also entered on that chronology is: "1983 - Bank of Kingston final bill written off.[827] This evidence established that not later then March 26, 1992, Foster had obtained a copy of the old bill marked "paid" with some documentation showing the bill was written off previously in 1983.

Several documents in Foster's briefcase detailed efforts to establish that Rick Massey brought Madison Guaranty's business into Rose. Susan Thomases's notes of her conversation with Webb Hubbell on February 24, 1992 recorded that Hubbell told her, "Rick will say" he brought the business in. In a two-page statement, which Mrs. Clinton testified she prepared in this time period, she addressed two issues: 1) she said Massey brought the business in, and she was only enlisted to intervene with McDougal on April 23, 1985 to get the "old bill" paid and get a retainer and 2) she had no substantive involvement in the work the firm did for Madison Guaranty in front of the Securities Commissioner appointed by her husband the Governor.[828] Mrs. Clinton's two-page statement was never released publicly.

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[826] Rose to Bank of Kingston (Dec. 1981) (Doc. No. DEK 014941).

[827] Foster Chronology of the Rose Law Firm Representation of Madison Guaranty Savings & Loan (Mar. 26, 1992) (Doc. Nos. 1180-00000237 through 240).

[828] Two-page statement prepared by Mrs. Clinton (Feb./Mar. 1992) (Doc. No. DEK 009889-9890). See H. Clinton 1/26/96 GJ at 54.

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Foster's briefcase contained a copy of this two-page statement with handwritten corrections on it.[829] Later located in Rose's de-archived computer files was Mrs. Clinton's statement incorporating the handwritten changes.[830]

Rick Massey testified that when questions arose during the 1992 campaign about Rose's work for Madison Guaranty, Vince Foster spoke with him.[831] Foster told Massey he was putting together a firm response and needed Massey's files.[832] Massey told Foster he had files but wanted to copy them first.[833] Massey said Foster was clearly irritated he was not getting files immediately. Massey thought Foster received files the next day.[834]

Webb Hubbell testified that he and Vince Foster spoke with Massey in 1992 while figuring out what work Rose did for Madison Guaranty. Hubbell thought Foster wrote a memo about this.[835]

An original three-page typewritten statement signed by Richard Massey was discovered in Foster's attic briefcase in late July 1997.[836] This document was dated March 26, 1992, and was

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[829] Two-page statement with handwritten correction found in Foster's briefcase (July 31, 1997) (Doc. No. 1180-00000012 through 13). Mrs. Clinton identified the writing as Vince Foster's. H. Clinton 4/25/98 Depo. at 29.

[830] Four-page double spaced statement recovered from Foster's de-archived computer files. (Dec. 1, 1997). See R. Clark 12/2/97 GJ at 134, 138-39.

[831] Massey 11/7/95 GJ at 67-68; Massey 12/3/97 GJ at 40-41.

[832] Massey 12/3/97 GJ at 39-41.

[833] Id. at 40-41.

[834] Id.

[835] Hubbell 12/19/95 GJ at 91-92.

[836] Statement of Richard Massey (Mar. 26, 1992) (Doc. No. 1180-00000235); Massey 12/3/97 GJ at 55.

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prepared on Vince Foster's computer.[837] The statement provided a summary of Massey's activities in connection with Rose's representation of Madison Guaranty before the ASD.[838]

3. Forensic Analysis.

The Independent Counsel asked the FBI to conduct a forensic analysis of documents found in Foster's attic for latent fingerprints of Mrs. Clinton, Foster, Hubbell, Kennedy, Kendall and Massey.[839] That analysis established forty-six latent fingerprints and fourteen latent palm prints on thirty-six of the fifty-three documents examined. The FBI identified eleven latent fingerprints on nine documents as those of Foster's.[840] The FBI did not identify any remaining prints as those of Mrs. Clinton, Foster, Hubbell, Kennedy, Kendall, or Massey.[841]

IV. ANALYSIS

This section sets forth the Independent Counsel's analysis regarding potential charges arising from the billing records investigation. The Independent Counsel considered, particularly, the potential charge of obstruction of justice for concealing the billing records from lawful grand

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[837] R. Clark 12/2/97 GJ at 140.

[838] See Statement of Richard Massey (Mar. 26, 1992) (Doc. Nos. 1180-00000233 through 235).

[839] Letter from SSA Steven Irons, FBI/OIC, to Don Thompson, Assistant Director of FBI Laboratory Division (Nov. 5, 1997). Documents examined included Massey's memorandum, billing records, and Bank of Kingston bills.

[840] Federal Bureau of Investigation Laboratory Report at 2-3 (June 8, 1998). Three prints on Hillary Rodham Clinton statement regarding Madison Guaranty Savings & Loan (Doc. Nos. 1180-00000012 through 13), two on Rose Billing Records (May 8, 1985) (Doc. Nos. 1180-00000260 through 261), one on Rose Billing Records (May 23, 1985) (Doc. No. 1180-00000269), two prints on Rose Billing Records (May 23, 1985) (Doc. No. 1180-00000273), and one print each on of Rose Billing Records (July 15, 1985) (Doc. Nos. 1180-00000285), Rose Billing Records (Aug. 9, 1985) (Doc. No. 1180-00000296) and Facsimile from the Governor's Mansion (Mar. 23, 1992) (Doc. No. 1180-00000396).

[841] Federal Bureau of Investigation Laboratory Report at 3 (June 8, 1998). The palm

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jury subpoenas and other investigations.[842]

The evidence however, was inconclusive on how the billing records were handled prior to their production in January 1996. Accordingly, inasmuch as the Office was unable to resolve the antecedent factual question of how they were handled, it was equally unable to establish that any individual had possessed the records when they were under subpoena and had withheld them from the grand jury (and other investigations) with the intention to obstruct justice.

Some evidence might permit an inference that Mrs. Clinton had the billing records in August 1995. But an equally plausible construction of events permits an inference that the billing records were stored in a closet for several years before construction work resulted in their discovery. Lacking substantial direct evidence, the Independent Counsel cannot exclude the possibility that some other, unknown, means of discovery occurred.

A. Mrs. Clinton.

The investigation found some evidence from which a trier of fact could conclude that Mrs. Clinton had the billing records in August 1995. In the Independent Counsel's judgment, that evidence was insufficient to satisfy a jury beyond a reasonable doubt that this was so. The evidence includes the following:

Testimony of three individuals establishes that Mrs. Clinton was observed carrying

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prints of Foster and Hubbell were not available for comparison with the latent palm prints.

[842] The discovery of records in Foster's attic substantially affected the analysis of other allegations, more fully discussed in Vol. II, Ch. 3 of Part B, of this Report. In particular, Mrs. Clinton testified that in April 1985 she visited James B. McDougal at the behest of her partners to induce him to pay an unpaid bill due to Rose from the Bank of Kingston. H. Clinton 4/25/98 Depo. at 23, 25; see Hillary Rodham Clinton statement (1992) (Doc. No. DEK009889). The Bank of Kingston bill marked "paid" with a payment date of October 23, 1984, found in Foster's attic is inconsistent with Mrs. Clinton's testimony.

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records which had the appearance of the billing records in July 1995, shortly prior to their discovery. This testimony is of some value, inasmuch as witnesses were able to independently and extrinsically corroborate the date of their observations and two made contemporaneous statements to third-parties regarding their encounter with Mrs. Clinton. Nonetheless, the evidence had insufficient probative value because none of the witnesses positively identified the records Mrs. Clinton carried -- only their general shape and size.

Analysis of Mrs. Clinton's opportunity, motive, and means supports this eyewitness evidence. As for opportunity, when records were first generated and/or retrieved (in February and March 1992), only three individuals had a substantial interest in them -- Mrs. Clinton, Foster, and Hubbell. Foster had two copies of those records, and Hubbell and Mrs. Clinton handled one copy of them. By July and August 1995, Foster was dead, and Hubbell was getting ready to begin service of his prison sentence.[843] Mrs. Clinton, of course, worked in a room approximately eight feet away from the book room where Mrs. Huber said she discovered the billing records.

As to motive, the Independent Counsel examined whether any significant Whitewater-related events occurred in July and August 1995. The prominence of such events might provide a reason for an individual to consult the billing records in that time frame. At approximately the time billing records were discovered in Room 319A, the House Banking Committee was conducting extensive hearings relating to Whitewater. Hubbell testified before the Committee on August 10, 1995 and was questioned extensively about conflicts of interest Rose might have had that would have precluded it from representing the government in its lawsuit for Madison

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Guaranty against Frost & Company.[844]

Also, on July 28, 1995 and August 3, 1995, the FDIC-OIG[845] and the RTC-OIG[846] released their reports about alleged conflicts of interest by Rose. Both reports found that Rose had concealed actual and/or potential conflicts of interest from the FDIC and RTC, especially with the Frost & Company case.[847] Finally, as to means, as set forth more fully in the discussion of allegations of the removal of documents from Vincent W. Foster Jr.'s office, of this Final Report, some evidence exists that records from Foster's office were transported to Room 323, after he died, and that Mrs. Clinton knew it.

Thus, the Independent Counsel determined that from this evidence a trier of fact could conclude that Mrs. Clinton had the billing records in the White House in August 1995 or thereafter. But the evidence was insufficient to obtain and sustain a conviction beyond a reasonable doubt.

B. Other Hypotheses.

Foster's records, containing the billing records, may have been transported to Room 323's closet without Mrs. Clinton's knowledge. There was no evidence negating the possibility that the

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[843] Hubbell began serving his 21-month prison sentence on August 7, 1995.

[844] See Hearings on the Failure of Madison Guaranty Savings and Loan Association and Related Matters Before the House Comm. on Banking and Financial Services, 104th Cong. 47 (Aug. 10, 1995).

[845] FDIC-OIG, Report of Investigation, Alleged Conflicts of Interest by the Rose Law Firm, Case No. IO-94-096 (July 28, 1995).

[846] RTC-OIG, Report of Investigation Concerning Rose Law Firm, Case No. WA-94-0016 (Aug. 3, 1995).

[847] See FDIC-OIG, Report of Investigation, Alleged Conflicts of Interest by the Rose Law Firm, Case No. IO-94-096 (July 28, 1995); RTC-OIG, Report of Investigation Concerning Rose Law Firm, Case No. WA-94-0016 (Aug. 3, 1995).

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documents were left there undisturbed (and unknown) in Room 323's closet until August 1995. In August 1995, substantial construction work was underway on the residence's third floor. It is undisputed that in mid-August, Room 323's closet was emptied to install heating and air conditioning ducts. And, finally, the evidence established that White House staff routinely transferred items from Room 323 to Room 319A, and vice versa, using them, in effect, as alternate storage sites. Thus, the Independent Counsel has also determined that evidence exists from which a reasonable trier of fact could conclude the billing records were stored in Room 323's closet until August 1995, when they were removed by staff who emptied the closet and left them in Room 319A. But the evidence cannot establish that hypothesis with any certainty.

Further, the Independent Counsel cannot exclude other ways the billing records made it to Room 319A. Although the two scenarios outlined above are, in his judgment, the most plausible, only supposition supports a final conclusion as to how billing records found their way to the table in Room 319A.

In light of the investigation's inability to answer the critical question of who (if anyone) had the billing records in August 1995, it necessarily follows there was insufficient evidence to establish that any individual knowingly and willfully had the records with the intention of obstructing justice. Accordingly, the Independent Counsel has declined prosecution on the belated production of the billing records at the White House.

V. SUMMARY CONCLUSIONS

The investigation determined where the Rose billing records came from -- they were gathered together by Hubbell and Foster in Little Rock, Arkansas in February and March 1992. And the investigation determined where they ended up -- they were found by Huber in White House residence Room 319A in August 1995.

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Direct evidence of what happened to them in between does not exist. Did Foster bring them to his office in the White House in January 1993? Were they unknowingly stored in a closet in Room 323 from July 1993 to August 1995? Or were they part of Mrs. Clinton's personal records, shipped to the residence in January 1993? Did she consult them in August 1995 and then mistakenly leave them in Room 319A? Did she consult them in December 1995 or early January 1996 when three different investigations were focusing on her work for Madison Guaranty? Or was there some other source for the records?

These questions have no definitive answer. Accordingly, criminal prosecution from this aspect of the Office's obstruction of justice investigation of Rose billing records is inappropriate. The matter is now closed.

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PART E

THE DISCOVERY AND REMOVAL OF DOCUMENTS FROM VINCENT W. FOSTER JR.'S OFFICE

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I. INTRODUCTION

Vincent W. Foster Jr., White House Deputy Counsel, died Tuesday, July 20, 1993. Because his body was found in Fort Marcy Park, operated by the National Park Service, the United States Park Police investigated his death. The Park Police was helped in some aspects of its investigation by the Federal Bureau of Investigation ("FBI") and the Department of Justice ("DOJ").[848]

On Thursday, July 22, 1993, in front of Park Police, FBI and DOJ personnel, White House Counsel Bernard Nussbaum reviewed documents and other items in Foster's office[849] in search of a suicide note.[850] None was found. On Monday, July 26, 1993 (four days later), Associate Counsel to the President Stephen Neuwirth discovered a torn "note" apparently written by Foster, in a briefcase in Foster's office. The White House produced the note to the Park Police on July 27, 1993.[851]

After the note's discovery, DOJ told the FBI to conduct an obstruction of justice

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[848] At the press conference concluding the investigation on Aug. 10, 1993, Deputy Attorney General Phillip Heymann said:

> The FBI joined the Park Police in the initial stages of the inquiry into Vince Foster's death because of his status as a federal official and assassination statutes. As it became apparent that this was a suicide, the FBI gradually assumed a secondary role to the Park Police.

Press Conference, Department of Justice, United States Park Police and Federal Bureau of Investigation, Report on Death of Vincent Foster, Former Deputy Assistant to the President (Aug. 10, 1993).

[849] See Captain Charles Hume, U.S. Park Police Report entitled "Review of documents from Vincent Foster's Office" at 1-2 (Aug. 4, 1993).

[850] See Markland 4/21/95 Int. at 2; Salter 4/19/94 Fiske Int. at 2.

[851] Detective Joseph Megby, U.S. Park Police Report at 1 (July 27, 1993).

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investigation.[852] The FBI focused on: 1) whether the note was seen by any individual other than Foster before July 26, 1993; and 2) why it took twenty-seven hours after the note's discovery on July 26 for the White House to give it to investigators.[853]

The Park Police and DOJ/FBI investigations concluded August 10, 1993, with a joint press conference. The Park Police concluded Foster's death was caused by a self-inflicted gunshot wound in Fort Marcy Park.[854] The DOJ and FBI had concluded there was insufficient evidence to prosecute any individual or entity for obstruction of justice.[855]

On December 20, 1993, a newspaper article reported that Whitewater documents were in Foster's office when he died, suggesting that White House officials had removed them on the night after his death.[856] The article did not provide a source for this suggestion.[857] The disclosure

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[852] Press Conference, Department of Justice, United States Park Police, and Federal Bureau of Investigation, Report on Death of Vincent Foster, Former Deputy Assistant to the President (Aug. 10, 1993) (statement of Phillip Heymann, Deputy Attorney General).

[853] See id. (statement of Special Agent in Charge Bob Bryant of the FBI Washington field office).

[854] Id. (statement of Chief Robert Langston); see also Detective Peter Markland, U.S. Park Police Report at 2 (Aug. 15, 1993).

[855] Press Conference, Department of Justice, United States Park Police, and Federal Bureau of Investigation, Report on Death of Vincent Foster, Former Deputy Assistant to the President (Aug. 10, 1993) (statement of Special Agent in Charge Bob Bryant of the FBI Washington field office).

[856] Jerry Seper, Clinton Papers Lifted After Aide's Suicide; Foster's Office Was Secretly Searched Hours After His Body Was Found, Wash. Times, Dec. 20, 1993, at A1 ("White House officials removed records of business deals between President Clinton, his wife and an Arkansas partnership known as Whitewater Development Corp. from the office of Vincent W. Foster Jr. during two searches after the deputy presidential counsel's suicide, The Washington Times has learned").

[857] See id.

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that Whitewater documents were in Foster's office when he died, and that they were not shown to investigators during Nussbaum's search on July 22, led to numerous Foster/Whitewater media stories over the next several weeks.[858]

On January 12, 1994, President Clinton asked Attorney General Janet Reno to appoint a regulatory Independent Counsel.[859] On January 20, 1994, Attorney General Reno appointed Robert B. Fiske Jr., as regulatory Independent Counsel.[860] Mr. Fiske opened a new investigation into Foster's death and considered whether any individual or entity obstructed justice or committed any federal crime by the handling of papers and documents from Foster's office. Mr.

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[858] David E. Rosenbaum, The Whitewater Inquiry, Questions That Are Lingering, The N.Y. Times, Jan. 13, 1994, at A18 ("On the day last July when Mr. Foster committed suicide, a file on Whitewater was removed from his office before Federal investigators could see it"); William Safire, Foster's Ghost, N.Y. Times, Jan. 6, 1994, at A21 ("What terrible secret drove Vincent Foster . . . to put a bullet through his head? . . . From the moment Foster's body was found, White House Counsel Bernard Nussbaum acted to keep those Whitewater files away from prying eyes"); Adam Clymer, G.O.P. in a Bind in Seeking an Inquiry on Clinton Deals, N.Y. Times, Dec. 28, 1993, at A9 ("The Whitewater issue first arose during last year's Presidential campaign, then arose again last week after White House officials said a file with material about the Clintons's investment had been removed from the office of [Foster] without being shown to agents investigating his death"); David Johnston, Investigator to Seek Ex-White House Aide's Files on Clinton Land Dealings, N.Y. Times, Dec. 22, 1993, at A20 ("Mr. Gearan's statement of Monday night . . . has revived lingering questions about the way the White House responded to Mr. Foster's death and handled papers left in his office").

[859] See John King, Clinton to Request Special Counsel for Whitewater, Chicago Sun-Times, Jan. 12, 1994, at 3.

[860] See Application to the Court Pursuant to 28 U.S.C. § 592 (c) (1) for the Appointment of an Independent Counsel, In Re Madison Guaranty Savings & Loan Association, (D.D.C.) (No. PN 94-1) (July 10, 1994). Mr. Fiske's jurisdictional statement gave him authority to investigate whether any individuals or entities committed federal crimes "relating in any way to President William Jefferson Clinton's or Mrs. Hillary Rodham Clinton's relationships with (1) Madison Guaranty Savings & Loan Association, (2) Whitewater Development Corporation, or (3) Capital Management Services." See id.

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Fiske issued a report on June 30, 1994 concluding that Foster's death was a suicide.[861] He found "no evidence that any issues related to Whitewater, Madison Guaranty or CMS played any part in his suicide."[862] Mr. Fiske had not yet concluded his obstruction of justice investigation over the Foster documents when Independent Counsel Kenneth Starr was appointed on August 5, 1994.

Independent Counsel Starr was given similar jurisdiction over investigative matters as Fiske.[863] The Independent Counsel again investigated Foster's death and the handling of papers and documents from Foster's office. On October 10, 1997, the Independent Counsel issued a report concluding that Foster's death was a suicide.[864]

Foster had performed work for Madison Bank and Trust (whose majority owner was Jim McDougal) in 1981 and 1982.[865] Mrs. Clinton said Foster was involved in the retention of Madison Guaranty as a client of the Rose Law Firm in 1985,[866] and was copied on a July 14, 1986 letter from Mrs. Clinton to Jim McDougal about Rose's work for Madison Guaranty.[867]

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[861] Fiske Report, supra note 12, at 6.

[862] Id. at 58.

[863] See Order Appointing Independent Counsel, In re: Madison Guaranty Savings & Loan Assoc., (D.C. Cir. [Spec. Div.] Aug. 5, 1994). One exception is that James McDougal's name was added to Independent Counsel Starr's order. See id.

[864] Final Report of Kenneth W. Starr, Independent Counsel, on the Death of Vincent W. Foster Jr. at 114 (Oct. 10, 1997).

[865] See Reply Br. for Appellants In Re: Madison Bank & Trust, et al. v. First National Bank of Huntsville (Ark.) (No. 81-262) (listing Vincent Foster as attorney for appellant) (Doc. No. 105-00092103).

[866] H. Clinton 4/22/95 Depo. at 10-11; H. Clinton 4/25/98 Depo. at 50-51.

[867] Letter from Hillary Rodham Clinton to Jim McDougal (bcc: Vince Foster) at 2 (July

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During the 1992 presidential campaign, Foster had gathered documents, including Rose Law Firm billing records of Mrs. Clinton's work for Madison Guaranty.[868] Foster had analyzed Madison Guaranty-related issues for Mrs. Clinton[869] and provided legal service to the Clintons when they sold their interest in Whitewater to Jim McDougal in December 1992.[870] He researched the treatment of Whitewater on the Clinton's personal taxes in April 1993.[871] What brought serious attention to Foster's death was the fact that he had Whitewater-related documents in his White House office when he died.[872]

In light of Foster's work on many of these issues within this Office's jurisdiction, the Independent Counsel sought all information Foster had on Whitewater and Madison Guaranty. To obtain and account for all information that Foster possessed, and to determine whether the investigations about Foster's death were criminally obstructed, the Independent Counsel also focused on the handling of documents from Foster's office in the days and weeks following his

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14, 1986) (Doc. Nos. RLF2 62989 through 2990).

[868] Hubbell 5/7/96 GJ at 16-18.

[869] See H. Clinton 4/25/98 Depo. at 30-31.

[870] See Letter from Vincent Foster Jr., Rose Law Firm attorney, to Yoly Redden, the Clintons' accountant (Dec. 23, 1992) (Doc. No. 133-00006351); Letter with enclosures from Vincent Foster Jr., Rose Law Firm attorney, to Sam Heuer, James McDougal's attorney (Dec. 30, 1992) (Doc. Nos. 133-00006352 through 6356).

[871] See Facsimile Transmission Cover Sheet from Vincent Foster, Deputy White House Counsel, to Yoly Redden, the Clintons' accountant (Apr. 12, 1993) (Doc. No. 133-00006176); Fax Transmission and Letters from Yoly Redden, the Clintons' accountant, to Vince Foster, Deputy White House Counsel (Apr. 6-12, 1993) (Doc. Nos. 133-00006178 through 6180); Letter from Yoly Redden, the Clintons' accountant, to Vince Foster, Deputy White House Counsel (Apr. 2, 1993) (Doc. No. 133-00006183).

[872] See Excerpt from Williams & Connolly index of documents taken from Foster's office (Doc. No. 325-DC-00000028).

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death. The investigation included an intensive examination of: activities in the White House on the night of July 20; circumstances surrounding the review of documents in Foster's office on July 22; the subsequent transfer of Clinton personal documents to the Williams & Connolly law firm by way of the White House residence; and discovery of the "note" in Foster's office on July 26.

II. FINDINGS

After concluding the investigation into the discovery and removal of documents from the office of Vincent W. Foster Jr., the Independent Counsel reports the following findings and conclusions.

About the events following Vince Foster's death:

- A precise chronology of events following Vince Foster's death could not be determined with certainty. Although there were numerous logs and telephone records showing times of calls and entry and exit from the White House, many people involved were unable to remember what was said or done, or the reasons for calls or meetings. The following chronology of events was determined with certainty:
    - Tuesday, July 20, 1993:
        - The body of Vince Foster was found in Ft. Marcy Park, VA shortly before 6:00 p.m.[873]
        - United States Park Police ("USPP") notified the Secret Service about Foster's death at about 8:30 p.m.
        - President Clinton learned of Mr. Foster's death after his appearance on the "Larry King Live" show. The USPP notified Lisa Foster, Vince Foster's wife, about his death at 10:00 p.m.

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[873] Unless stated otherwise, all time references are to the U.S. Eastern time zone.

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- President Clinton called Mrs. Clinton who was visiting her mother in Arkansas. At 10:42 p.m., the alarm to the Counsel's Suite was disarmed. Subsequently, Counsel to the President Bernard Nussbaum went to Foster's office to look for a suicide note.

- Patsy Thomasson arrived at the White House at 10:49 p.m. and went to Foster's office to look for a suicide note.

- President Clinton arrived at the Foster residence at 10:51 p.m.

- Maggie Williams arrived at the White House at 11:00 p.m. and went to Foster's office, after having had a telephone conversation with Mrs. Clinton at 10:13 p.m.

- Subsequent telephone calls occurred between Mrs. Clinton, Susan Thomases and Maggie Williams late in the evening of July 20 into the early morning hours of July 21.

- Wednesday, July 21, 1993:

  - Betsy Pond, Nussbaum's secretary, entered the White House Counsel's suite at 7:01 a.m. and went into Foster's office to straighten it up.

  - Craig Livingstone entered the White House at 8:06 a.m. Secret Service uniformed officer Bruce Abbott saw Livingstone and another man coming out of the elevator in the White House on the first floor carrying boxes and perhaps a briefcase. Abbott thought this happened between 6:45 a.m. and 8:30 a.m.

  - A Secret Service officer was posted outside Foster's office at 10:20 a.m.

  - A meeting was held in the afternoon to discuss the investigators' need to search Foster's office. Present at the meeting were members of the FBI, USPP and USSS, as well as Nussbaum, Associate Counsels Stephen Neuwirth, and Clifford Sloan, and David Margolis and Roger Adams, two attorneys from DOJ. It was agreed that a search would take place the next day. Margolis and Adams said there was an agreement that they would be able to examine at least the first page or two of each document in Foster's

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office.

- A lock was installed in the door to Foster's office; the Secret Service guard was relieved at 10:32 p.m.

- Thursday, July 22, 1993:

  - Margolis and Adams arrived at the White House at 9:56 a.m. to search Foster's office and interview White House employees. Nussbaum told Margolis and Adams that he would review the documents and turn over only what the investigators were entitled to have. Margolis and Adams said this was a breach of their agreement. Nussbaum said there was no agreement.

  - The search of Foster's office began at 1:15 p.m. and lasted until 2:49 p.m. After the search, Maggie Williams collected personal files belonging to the Clintons. Williams and Thomas Castleton, Special Assistant to the White House Counsel, carried one or perhaps two boxes of such documents up to the third floor residence.

  - Williams and Castleton entered the third floor residence at 7:25 p.m. They stayed for seven minutes. Carolyn Huber opened a locked closet and put the box or boxes in it.

- Friday, July 23, 1993:

  - Foster's funeral was held in Little Rock. President Clinton and Mrs. Clinton returned to Washington that evening.

- Monday, July 26, 1993:

  - Stephen Neuwirth was assigned to index the files in Foster's office. He found a torn note written by Foster in an empty briefcase in the office. Neuwirth showed the note to Nussbaum, who shortly thereafter showed it to Mrs. Clinton.

- Tuesday, July 27, 1993:

  - Subsequently, Nussbaum telephoned Attorney General Reno and told her about the note found in Foster's briefcase. She told

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Nussbaum that he had to deliver the torn note to the investigators. Nussbaum subsequently delivered the note to the USPP at 9:15 p.m.

- Lisa Foster was shown the torn note at 6:00 p.m.

About possible document tampering before the July 22 search as obstruction of the Park Police and FBI investigations:

- Park Police officers testified that on the evening of July 20, they asked David Watkins to have Foster's office sealed. The office was not sealed until the following morning. Watkins testified that he did not remember being asked to seal the office and assumed he would have complied if asked. The officers' contemporaneous notes did not show a request for the office to be sealed. No substantial evidence exists to establish that anyone obstructed justice by declining to comply with a request to seal Foster's office.

- On the evening of July 20, Bernard Nussbaum, Maggie Williams, and Patsy Thomasson all entered Foster's office. Nussbaum and Thomasson later said they were looking for a suicide note. Before Williams went to the White House, she had a telephone conversation with Mrs. Clinton. Secret Service uniformed officer Henry O'Neill later said he thought he saw Williams leaving with documents. Williams passed a polygraph examination in which she was asked whether she removed any documents from Foster's office. Insufficient evidence exists to establish beyond a reasonable doubt that Nussbaum, Thomasson, Williams or Mrs. Clinton obstructed justice by either removing documents from Foster's office or ordering such removal.

- Around 7:00 a.m. on July 21, 1993, Betsy Pond, Nussbaum's secretary, entered the White House Counsel's suite before anyone else and looked around Foster's office. She later said she just straightened it up. Linda Tripp, then a secretary in the White House Counsel's office, later said Pond had told her she was looking for a note in Foster's office. Pond denied saying this to Tripp. Pond passed a polygraph examination on this issue. No substantial evidence exists to establish that Pond obstructed justice by tampering with documents in Foster's office.

- Uniformed Secret Service officer Bruce Abbott was on duty on the White House's first floor on the morning of July 21. He said he saw Craig Livingstone, Director of Personnel Security, exiting the elevator from one of the upper floors (the White

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House Counsel's suite is on the second floor) with another person and they were carrying boxes and perhaps a briefcase. Abbott initially said the event happened around 6:45-7:00 a.m. Secret Service logs show Livingstone did not enter the White House until 8:06 a.m. Abbott later said he could have seen Livingstone as late as 8:30 a.m. Livingstone denied removing any documents from Foster's office, although he did not deny that he could have been seen carrying some documents that day. No substantial evidence exists to establish that Livingstone obstructed justice by removing documents from Foster's office.

About the search of Foster's Office on July 22, 1993:

- DOJ attorneys David Margolis and Roger Adams said at the July 21 meeting with Nussbaum and others, it was agreed that the following day they would examine the first page or two of each document in Foster's office to determine whether it was relevant to the investigation. Phil Heymann, Deputy Attorney General, said he understood that to be the agreement with Nussbaum and that he had a conversation with Nussbaum on July 22 in which he criticized Nussbaum for breaching the agreement. Nussbaum and Neuwirth said they had discussed permitting the DOJ attorneys to look at each document but did not agree to it. Nussbaum agreed the DOJ attorneys asserted there was an agreement and were upset that Nussbaum was "breaching" it. Nussbaum said he could not remember Heymann being angry with him over a broken agreement.

- Because no complete index of the documents in Foster's office was ever made, it cannot be determined with any certainty what documents in Foster's office were kept from the DOJ attorneys. It could not be determined the extent to which, if at all, Nussbaum, in limiting the investigators' access to the documents, impeded their investigation.

- A series of phone calls between Mrs. Clinton and others, including Nussbaum, took place, which raised questions concerning whether Mrs. Clinton or others were attempting to influence Nussbaum on how he permitted the search to proceed. There were calls between Mrs. Clinton, Susan Thomases and Maggie Williams, and then phone calls between Thomases and Nussbaum. All of the people involved in the calls denied attempting to influence Nussbaum's decision. While the credible testimony of the DOJ attorneys and the timing of the series of phone calls raised the question whether someone had influenced Nussbaum's decision about how the search would be conducted, without a participant to those conversations testifying that was what happened, insufficient evidence exists to establish that anyone endeavored to obstruct justice.

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About the removal of documents from Foster's office after the July 22, 1993 search:

- Several groups of documents were taken out of Foster's office after the July 22 search, including documents taken by Maggie Williams and Thomas Castleton to the third floor White House residence; and documents that were taken to Williams & Connolly, a law firm representing the Clintons individually. No complete index was made of the documents taken from Foster's office, and the White House was unable to later produce or identify the documents that were taken into the residence. Whether documents that were relevant to the investigations were withheld was not determined. Insufficient evidence exists to establish that any person endeavored to obstruct justice by removing documents from Foster's office after the July 22 search.

About the note's discovery in Foster's briefcase on July 26, 1993:

- Associate Counsel Neuwirth found a note in Foster's briefcase in his office on July 26, four days after the search in the DOJ attorneys' presence. Neuwirth showed the note to Nussbaum, who then showed the note to Mrs. Clinton. The note was not reported to federal investigators for approximately thirty hours, when it was reported because Nussbaum told Attorney General Reno and asked her what should be done about the note; she told him he must give it to the federal investigators.

- Insufficient evidence exists to establish beyond a reasonable doubt that Neuwirth's and Nussbaum's explanations of how the note was missed, but found later, were false. The asserted bases for the decision to delay notification to federal investigators of the note for approximately thirty hours after discovery -- to conduct research on whether the note was privileged and to permit Mr. Foster's widow to see the note -- do not appear to justify withholding the fact the note was found. Nevertheless, insufficient evidence exists to establish that anyone intended to obstruct the due administration of justice by delaying the note's production to investigators.

About possible perjury, false statements, and obstruction of subsequent investigations:

- Insufficient evidence exists to establish beyond a reasonable doubt that anyone committed perjury, made false statements or obstructed justice by refusing to furnish subpoenaed records.

About President Clinton and Mrs. Clinton:

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- Insufficient evidence exists to prove beyond a reasonable doubt that President Clinton or Mrs. Clinton withheld documents from a lawful grand jury subpoena, gave false testimony or otherwise acted or endeavored to act in a manner intended to obstruct the due administration of justice.

III. FACTUAL SUMMARY

A. Notification of Foster's Death.

Park Police officers notified the United States Secret Service about Foster's death at approximately 8:30 p.m. on July 20, 1993.[874] Park Police Lieutenant Patrick Gavin said he notified Secret Service Lieutenant David Woltz about Foster's death at 8:30 p.m.[875] Gavin said he was the first person from the Park Police to notify the White House or the Secret Service about Foster's death.[876] Lieutenant Woltz confirmed he was notified by Gavin about the apparent suicide,[877] and remembered Gavin told him it was Park Police policy to notify the Secret Service about the death of a White House pass holder.[878]

Lieutenant Woltz said he then tried to telephone David Watkins, Director of Management and Administration for the White House, who was in charge of White House personnel.[879]

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[874] Memo from FBI Special Agent Scott Marble to FBI Special Agent in Charge Intelligence Division, White House Branch Uniformed Division (July 20, 1993) (Doc. No. 211-DC-00000147) (Marble drafted this memo at 10:01 p.m. that evening).

[875] Gavin 2/23/95 GJ at 25-27. Gavin's notes from that night showed Woltz's name and number. See Gavin's typed notes with handwritten notes entitled "VINCENT FOSTER SUICIDE" (GJ Exh. 165).

[876] Gavin 2/23/95 GJ at 26-27.

[877] Woltz 7/5/95 Int. at 1-2.

[878] Id. at 1. The Park Police had found Foster's White House pass in his car. Braun 4/28/94 Fiske Int. at 3.

[879] Woltz 7/5/95 Int. at 2.

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Watkins was not at home but was paged by a White House operator and called Woltz back.[880] Lieutenant Woltz told Watkins that Foster had committed suicide in Fort Marcy Park.[881] Watkins agreed he was told about the death in a call from the Secret Service while attending a movie with his wife.[882]

Lieutenant Woltz also notified his supervisor, Inspector Dennis Martin, as well as personnel at the Secret Service Duty Desk.[883] Inspector Martin said he called Craig Livingstone, then Director of Personnel Security at the White House, and told him about Foster's death.[884] Inspector Martin asked Livingstone to identify the body.[885] Inspector Martin remembered that

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[880] Id.

[881] Id.

[882] Watkins 7/11/95 Senate Whitewater Comm. Depo. at 31. Unless expressly noted otherwise, all citations to "Senate Whitewater Comm. Depo." testimony refers to testimony given by the named witness in conjunction with proceedings held by the United States Senate Committee on Banking, Housing, and Urban Affairs In Re: Whitewater, 104th Cong., 1st Sess. (1995); see also Watkins 6/22/94 Fiske Int. at 3. Records showed that Watkins called the Secret Service from his mobile phone at 9:05 p.m. for two minutes. Watkins's Bell Atlantic Mobile Systems billing records (bill dated July 22, 1993) (Doc. No. 210-DC-00002348). This may not have been the initial contact between the Secret Service and Watkins. See Woltz 7/5/95 Int. at 2-3 (indicating that Watkins called back twice after initial notification).

[883] Woltz 7/5/95 Int. at 2. Inspector Martin confirmed that he was notified about Foster's death by a call from Woltz who said Woltz said the Park Police had notified him about the death of a White House employee. See Martin 5/23/95 GJ at 3.

[884] Martin 5/23/95 GJ at 4. Livingstone said soon after arriving home on July 20, he was notified about Foster's death via telephone by Martin. Livingstone 5/26/94 Fiske GJ at 5-6. Records show that Livingstone left the White House at 8:31 p.m. White House gate records (July 20, 1993) (Doc. No. 211-DC-00001103). On July 21, Livingstone prepared a chronology of his activities, which said Martin notified him at 9:00 p.m. on the night of July 20 as he arrived home. Livingstone's typewritten chronology (July 21, 1993) (Doc. No. 033-DC-00001772).

[885] Martin 5/23/95 GJ at 5, 8.

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Livingstone was quite shocked and upset, but said he would take care of it.[886]

Bill Burton, Staff Director to Chief of Staff Mack McLarty, testified he learned about the death just before 9:00 p.m. while at the White House in a call from David Watkins.[887] McLarty remembered that Burton notified him in the White House shortly after 9:00 p.m. -- after the start of the "Larry King Live" show in which the President was appearing and was broadcast that night from the White House.[888] Other officials at the White House such as Bruce Lindsey, George Stephanopoulos (Senior Advisor), and Mark Gearan (Director of Communications) remembered learning about Foster's death from Burton.[889] Webster Hubbell remembered being told by Stephanopoulos while at a restaurant in Washington.[890] Nussbaum remembered being told by Gearan while dining out in Washington as well.[891]

Mrs. Clinton said McLarty told her by phone while at her mother's house in Arkansas[892] where Secret Service records show she arrived at 9:09 p.m.[893] Maggie Williams, Chief of Staff to

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[886] Martin 4/29/94 Fiske Int. at 1.

[887] Burton 3/22/95 GJ at 43.

[888] McLarty 4/25/95 GJ at 32-33; see Burton 3/22/95 GJ at 45.

[889] See Lindsey 6/22/94 Fiske Int. at 3 (notified after the show started); Stephanopoulos 5/24/94 Fiske Int. at 5 (he was notified after the show started); Gearan 4/12/95 GJ at 12 (said he was notified after the show started).

[890] Hubbell 1/13/95 Int. at 5; see Stephanopoulos 5/24/94 Fiske Int. at 6 (sworn testimony).

[891] Nussbaum 5/26/94 Fiske GJ at 12.

[892] H. Clinton 6/12/94 Fiske Depo. at 15; see McLarty 4/25/95 GJ at 35.

[893] Secret Service Presidential movement logs (July 20, 1993) (Doc. No. 337-DC-00000141).

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the First Lady, remembered Mrs. Clinton calling her at home later that night.[894] At the conclusion of the "Larry King Live" show, McLarty notified President Clinton about Foster's death.[895] The President called Mrs. Clinton.[896]

B. Evidence about Tampering with Documents or Foster's Note before the July 22 Search.

The morning of July 21, 1993, Associate Counsels Steve Neuwirth and Cliff Sloan told

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[894] M. Williams 8/3/93 FBI Int. at 1; see H. Clinton 6/12/94 Fiske Depo. at 16. Records showed that Williams received a page at 9:46 p.m. indicating that Mrs. Clinton wanted to talk to her. M. Williams's White House pager records (July 20-24, 1993) (Doc. No. 210-DC-00002660). Records showed a 16-minute call from Dorothy Rodham's house to Williams's house at 10:13 p.m. Mrs. Rodham's phone records (bill dated July 23, 1993) (Doc. No. 065-DC-00000009).

Williams was uncertain about the time of notification by Mrs. Clinton. In her first interview on August 3, 1993, she said it was 9:30 p.m. At her May 26, 1994 grand jury appearance, she was "unsure" but identified 8:00 p.m. Phone records showed that Williams had a 26-minute call with personal friend Audrey Evans in Little Rock at 9:18 p.m. M. Williams's phone records (bill dated Aug. 29, 1993) (Doc. No. 055-DC-00000008). Williams testified she had not learned about Foster's death then. Senate Whitewater Comm. Hearing, supra note 408, at 291-92 (July 26, 1995) (testimony of M. Williams).

[895] W. Clinton 6/12/94 Fiske Depo. at 23; McLarty 4/25/95 GJ at 34. The usher's logs showed the President went to the second floor with McLarty and two unidentified staff at 10:00 p.m. White House Usher's log (July 20, 1993) (Doc. No. 336-DC-00000857). The Secret Service movement logs showed the time as 10:02 p.m. Secret Service Presidential movement logs (July 20, 1993) (Doc. No. 337-DC-00000154).

[896] White House residence phone records show a call at 10:10 p.m. for approximately three minutes to Dorothy Rodham's house in Little Rock. White House Residence phone records (bill dated Aug. 3, 1993) (Doc. No. 095-DC-00000007). Secret Service logs show the President departed for the Foster residence in Georgetown at 10:40 p.m., arrived there at 10:51 p.m., and left the Fosters at 11:55 p.m. Secret Service Presidential Movement logs (July 21, 1993) (Doc. No. 337-DC-00000155). Phone records show another approximate twenty-six minute call from the White House residence to Dorothy Rodham's house at 12:18 a.m. White House Residence phone records (bill dated Aug. 3, 1993) (Doc. No. 095-DC-00000008).

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Nussbaum that Foster's office should be sealed because the door had no lock.[897] Nussbaum contacted the Secret Service,[898] who guarded Foster's office from 10:20 a.m. on July 21 until 10:32 p.m. that night, when a lock was installed.[899]

A Secret Service log for that day shows two people entered Foster's office from the time the office was first guarded until the lock was installed.[900] At 11:10 a.m., Nussbaum entered the office and retrieved a picture for the President.[901] At 6:34 p.m., Cliff Sloan entered to replace trash that was removed by the cleaning crew.[902] Records and testimony show the office remained locked from 10:32 p.m. on July 21 until 1:15 p.m. on July 22, when the Secret Service unlocked the office to begin the search.[903]

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[897] Nussbaum 6/13/95 GJ at 164-65; Nussbaum 5/26/94 Fiske GJ at 32.

[898] Nussbaum 6/13/95 GJ at 166; Nussbaum 5/26/94 Fiske GJ at 33.

[899] A chronology of events created by Special Agent in Charge Flynn (July 21-22, 1993) (Doc. Nos. 211-DC-00000149 through 150); Handwritten log of persons entering Foster's office created by Secret Service officers posted at Foster's office (July 21-22, 1993) (Doc. No. 211-DC-00000151).

[900] Id.

[901] Handwritten log of persons entering Foster's office created by Secret Service officers posted at Foster's office (July 21-22, 1993) (Doc. No. 211-DC-00000151); see Nussbaum 5/26/94 Fiske GJ at 35.

[902] Handwritten log of persons entering Foster's office created by Secret Service officers posted at Foster's office (July 21-22, 1993) (Doc. No. 211-DC-00000151); see Sloan 7/7/95 Senate Whitewater Comm. Depo. at 118-19. The trash was retrieved from the cleaning crew later on the night of July 20 by Sylvia Mathews, then a Special Assistant to Assistant to the President for Economic Policy Robert Rubin. The trash was then stored overnight in the office of Roy Neel, then Deputy Chief of Staff. The handling of the trash is discussed in more detail below.

[903] A chronology of events created by Special Agent in Charge Flynn (July 21-22, 1993) (Doc. No. 211-DC-00000150); Handwritten log of persons entering Foster's office created by Secret Service officers posted at Foster's office (July 21-22, 1993) (Doc. No. 211-DC-00000151).

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This Office first investigated why Foster's office was not sealed or secured and, second, whether documents or other items were removed from Foster's office on the night of July 20 or morning of July 21.

1. White House Officials Failed to Seal the Office.

There are two aspects to White House officials' failure to seal Foster's office the night of July 20. The first concerns an alleged request by Park Police Officer Cheryl Braun to David Watkins. The second relates to discussions in the White House among David Gergen, Mack McLarty, Vernon Jordan, Mark Gearan, and perhaps Bill Burton and/or Bernard Nussbaum.

a. Braun and Watkins.

Braun and Watkins were both at the Foster house in Georgetown when the Foster family was notified about Foster's death around 10:00 p.m.[904] Braun said as she was leaving the Foster home around 11:00 p.m., she asked Watkins to ensure that Foster's office was sealed and that "[Watkins] said that he would have that done."[905] Braun's subsequent statements are similar,[906] although she said she meant only that Foster's office be locked, not that it be guarded or sealed with evidence tape.[907] Watkins testified:

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[904] See Braun 2/9/95 GJ at 77-78; Watkins 2/28/95 GJ at 73-74; Investigator John Rolla, U.S. Park Police Report Addendum at 1 (Aug. 5, 1993).

[905] See Braun 7/23/94 Senate Banking Comm. Depo. at 107-08; see also Braun 8/3/94 Fiske Int. at 1. Braun also said "[i]f I was to do it again, I would have tried to get a hold of an official from the Secret Service to [e]nsure that it was done." Braun 7/23/94 Senate Banking Comm. Depo. at 109.

[906] See Braun 2/9/95 GJ at 88.

[907] Senate Whitewater Comm. Hearing, supra note 408, at 54-55 (July 20, 1995) (testimony of C. Braun). She has also said she did not say anything to Watkins like "please

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I do not recall that. I can only say that in my dispensing my obligations in every manner in the White House or anything, if I was asked to do anything, and I felt that I could do it, then it was done. I'm pretty meticulous about that, and I would have had no reason not to do it, had they requested it -- or not to attempt to do it. I did not recollect that."[908]

Watkins said, "I think that had I been asked that, I would have recalled it."[909]

There was additional evidence relevant in assessing the differences in the accounts given by Braun and Watkins.

- Officers Braun and John Rolla prepared reports about the night of July 20. Their reports make no mention about the request to Watkins.[910] Nor is there any other Park Police report or note that mentions the request to Watkins.[911]

- The report of Braun's first interview, conducted by Mr. Fiske's office, does not say she asked Watkins to seal the office.[912]

- Officer Rolla said he did not hear Braun's request to Watkins, although Braun mentioned the request to him later in the evening.[913] However, Braun did not remember discussing it with Rolla.[914]

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ensure that no one enter the office." Id. at 54.

[908] Watkins 2/28/95 GJ at 103.

[909] Watkins 7/11/95 Senate Whitewater Comm. Depo. at 42.

[910] Investigator John Rolla, U.S. Park Police Report at 1 (July 21, 1993); Investigator John Rolla, U.S. Park Police Report Addendum, at 1 (Aug. 5, 1993); Sergeant Cheryl Braun, U.S. Park Police Report at 1 (July 20, 1993);

[911] See Production from the Park Police (Doc. Nos. 105-DC-00000001 through 390).

[912] See Braun 4/28/94 Fiske Int. at 4. The report said, "[A]t some point, President CLINTON and his Secret Service escort arrived at the residence, adding that there were so many people present, attempting to console and help, that she and Officer ROLLA decided that they could accomplish nothing further that night regarding their investigation and they left." Id.

[913] Senate Whitewater Comm. Hearing, supra note 408, at 22 (July 20, 1995) (testimony of J. Rolla); Rolla 6/20/95 Senate Whitewater Comm. Depo. at 55-56.

[914] Braun 6/19/95 Senate Whitewater Comm. Depo. at 88.

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- Park Police Captain Hume, who along with Detective Peter Markland took over the investigation from Braun and Rolla on the morning of July 21, testified that he believed his request on July 21 was the first request to secure the office.[915]

- Detective Markland, in his initial statement to Mr. Fiske's office, said "he determined that the investigators working the night before hadn't made this request" to seal the office.[916] A year later in the grand jury, after Braun testified publicly about her request to Watkins, Markland said he learned the morning after Foster's death that Braun had requested on the night of July 20 the office be sealed.[917]

b. White House Discussions.

Secret Service records for July 20, 1993 show President Clinton, Mack McLarty, Counselor David Gergen, and private attorney Vernon Jordan returned to the White House residence kitchen from the Fosters' at approximately 12:05 a.m.[918] Mack McLarty remembered Gergen having a conversation with Mark Gearan, Assistant to the President for Communications, about whether Foster's office was sealed.[919] McLarty's understanding of this conversation was that Gearan told Gergen the office was sealed.[920]

Gergen said McLarty thought securing the office was necessary to preserve it for law

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[915] Hume 5/23/95 GJ at 20.

[916] Markland 4/14/94 Fiske Int. at 1.

[917] Markland 5/23/95 GJ at 6-7.

[918] Secret Service Presidential Movement logs (July 21, 1993) (Doc. No. 337-DC-00000155) (showed the President returned at 12:05 a.m.); Secret Service White House Residence Movement log (July 20, 1993) (Doc. No. 336 DC-00000847) (showed the President, McLarty, Gergen, and Jordan entered the White House residence at 12:08 a.m.).

[919] McLarty 4/25/95 GJ at 40.

[920] Id.

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enforcement authorities.[921] Gergen contacted Gearan and told him McLarty wanted the office sealed,[922] and Gearan soon reported back the office had already been sealed.[923]

Typewritten notes written within seven to ten days of July 20 by Sylvia Mathews[924] stated Burton said they needed to get Nussbaum to lock the office.[925] Mathews's notes show she could not remember who told Nussbaum to lock the office, but she knew that he had the office locked.[926] Park Police Major Hines said he spoke with Burton the night of July 20 and said the Park Police needed to go into the office and that it should be secured, though Hines could not remember whether Burton acknowledged this statement.[927]

Nussbaum said, "I don't recall having any conversation with anyone that night as to

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[921] Gergen 10/21/94 Int. at 4. Jordan recalled that, while they were at the kitchen in the White House, Gergen called someone to ensure the office was sealed. Jordan 1/5/95 Int. at 3.

[922] Gergen 10/21/94 Int. at 4.

[923] Id. at 4. Although Gearan believed he had checked with Bill Burton to confirm whether the office was locked, Gearan 4/12/95 GJ at 19; see also Gearan 7/6/95 Senate Whitewater Comm. Depo. at 48, Burton said he could not remember a discussion on the evening of July 20 about sealing Foster's office. Burton 3/22/95 GJ at 54.

[924] Mathews 2/23/95 GJ at 32.

[925] Mathews's typewritten notes (created week after July 20, 1993) (Doc. No. 033-DC-00000620).

[926] Id.

[927] Hines 6/21/95 Senate Whitewater Comm. Depo. at 28-29. However, in his first interview with Mr. Fiske's office, where Hines described his conversations with the White House on July 20 and 21, he mentioned the conversation with Burton, but did not mention that he had made any request to secure the office. According to the interview report, Hines said he simply told Burton on July 20, the Park Police would be available to brief White House officials on the morning of July 21. However, on the morning of July 21, Hines had the definite impression from a comment made by Nussbaum that Foster's office would be immediately "posted," that Foster's office would be physically secured and entry would be denied to all White House personnel. Langston & Hines 5/17/94 Fiske Int. at 2-3.

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whether the office should be locked or sealed."[928] Nussbaum also said nobody considered Foster's office a crime scene or considered securing Foster's office the night of July 20.[929] He believed he locked up the Counsel's suite when he left that evening.[930] Records show that Secret Service Officer Henry O'Neill, not Nussbaum, re-alarmed the suite for the night at 11:41 p.m.[931]

2. The Confidential Witness.

This Office also investigated the possible removal of documents, including a note, from Foster's office. The first incident involves a conversation that a confidential witness said they overheard.

On the night of July 20, President Clinton appeared on "Larry King Live" show from 9:00 to 10:00 p.m.[932] The show was being broadcast from the White House library on the ground floor. A confidential witness (hereinafter referred to as "CW") was present at the White House.[933] During a break in the interview, CW entered the White House Map Room,[934] also on the ground floor near the library, and noticed a group of people huddled and talking to one another.[935] CW

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[928] Nussbaum 6/13/95 GJ at 157; see also Nussbaum 7/12/95 Senate Whitewater Comm. Depo. at 57. Marsha Scott said she remembered Webb Hubbell saying the Department of Justice should seal Foster's office. Scott 2/23/95 GJ at 106-07. Hubbell did not remember this but said his wife, Marsha Scott, and Sheila Anthony all told him that he said it. Hubbell 6/9/95 GJ at 28; see also Hubbell 1/13/95 Int. at 9-10.

[929] Nussbaum 5/13/94 Fiske Int. at 7.

[930] Nussbaum 6/8/95 Int. at 10.

[931] Secret Service alarm records (July 20-21, 1993) (Doc. No. 211-DC-00000038).

[932] See W. Clinton 6/12/94 Depo. at 21.

[933] CW 5/11/94 Fiske Int. at 1.

[934] Id.

[935] Id.

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identified the group's members as Mack McLarty, George Stephanopoulos, Dee Dee Myers (then Press Secretary), Mark Gearan and Bill Burton.[936] CW heard a male voice say, "[Y]es, there was a note found."[937] CW heard this remark between 9:15 and 9:45 p.m.[938] Other than CW, only those five people were in the Map Room.[939]

The five people who CW said were present in the Map Room denied the statement was made, or any knowledge about a note of any kind before a "note" was discovered in Foster's briefcase on July 26, 1993 by Steve Neuwirth.[940]

3. Thomasson/Nussbaum/Williams in Foster's Office.

a. Discussion at Foster's House.

Responsibility for notifying the Foster family fell to Park Police Officers Cheryl Braun and John Rolla. David Watkins contacted Rolla and Braun before they went to the Fosters; Rolla and Braun then drove to Watkins's house and took him to the Foster house.[941] An addendum to

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[936] Id.

[937] Id. at 1-2.

[938] Id. at 2. Alarm records showed the Counsel's suite was not reopened that night until 10:42 p.m., well after the time CW overheard the conversation. Secret Service alarm records (July 20, 1993) (Doc. Nos. 211-DC-00000037 through 38). If a note were found in Foster's office, it presumably would have been found after 10:42 p.m. If CW's memory was accurate, the note referred to in the overheard conversation was found in a place other than Foster's office.

[939] CW 5/11/94 Fiske Int. at 2. CW relayed the above information to Greta Van Susteren of CNN on July 21, 1993. Id. at 3. Van Susteren confirmed in her interview with Mr. Fiske's office that CW told her CW overheard someone affiliated with the White House mention that a suicide note was found. Van Susteren 6/29/94 Fiske Int. at 2.

[940] Burton 5/25/94 Fiske Int. at 14 (sworn testimony); Gearan 5/25/94 Fiske Int. at 13, 18 (sworn testimony); McLarty 4/25/95 GJ at 66-67; Myers 5/27/94 Fiske Int. at 21 (sworn testimony); Stephanopoulos 5/24/94 Fiske Int. at 8 (sworn testimony).

[941] Investigator John Rolla, U.S. Park Police Report Addendum, at 1 (Aug. 5, 1993).

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the report Rolla prepared later that night said they arrived at the Foster house at approximately 10:00 p.m.[942]

Pager records show that at 10:34 p.m., David Watkins paged Patsy Thomasson, who was at the Sequoia Restaurant in Washington, D.C.[943] Thomasson and Watkins said when Thomasson returned the call, he told her about the death and asked her to go to the White House to look into Foster's White House office for a note.[944]

b. Gail Kennedy's Account of the Night of July 20.

Gail Kennedy, then married to Bill Kennedy, said she remembered a conversation at the Foster house among Webb Hubbell and Bill Kennedy, and perhaps David Watkins and Marsha Scott, that "there was some concern of what was in Vince's office"[945] that might be harmful or embarrassing to Foster or the Clintons.[946] She did not know of concern over particular documents, but merely "a general concern from my perception."[947] She did not know whether any action was taken because of these conversations.[948] Those named by Mrs. Kennedy said they did not remember any such conversation.[949] The evidence suggests that Mrs. Kennedy could not

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[942] Id. Webster Hubbell, his wife, and Marsha Scott arrived at approximately the same time. See Scott 2/23/95 GJ at 97.

[943] Thomasson's White House pager records (July 20-25, 1993) (Doc. No. 210-DC-00002654); Thomasson 5/10/94 Fiske GJ at 14.

[944] Thomasson 7/11/95 GJ at 29; Watkins 2/28/95 GJ at 78; Watkins 6/22/96 Int. at 4.

[945] G. Kennedy 1/24/95 GJ at 14-15.

[946] Id. at 14.

[947] Id. at 16.

[948] Id.

[949] Hubbell 6/9/95 GJ at 28; W. Kennedy 3/2/95 GJ at 120; Scott 2/23/95 GJ at 108;

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have heard that conversation, if it took place at all, before Watkins talked with Thomasson.

Thomasson talked to Watkins some time after 10:34 p.m. (when she was paged) and before 10:48 or 10:49 p.m. (when she entered the White House).[950] The weight of the evidence suggests that Gail Kennedy did not arrive at the Fosters until some time after the Watkins-Thomasson conversation. William Kennedy and Craig Livingstone went to Fairfax Hospital to identity Foster's body.[951] After leaving Fairfax Hospital, they returned to the Kennedy house in suburban Virginia.[952] There, they met Gail Kennedy and the three of them drove in her car to the Foster home in Georgetown.[953] Secret Service logs show the President arrived at the Foster home at 10:51 p.m.[954] Most witnesses said the President was at the Fosters' home when the Kennedys and Livingstone arrived.[955] The first call shown on records of Gail Kennedy's car phone that day was at 11:08 p.m. (a call to the White House).[956] Gail Kennedy remembered using the phone en

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Watkins 2/28/95 GJ at 115.

[950] See Secret Service alarm records (July 20-21, 1993) (Doc. No. 211-DC-00000038); White House gate records (July 20, 1993) (Doc. No. 211-DC-00001098).

[951] W. Kennedy 3/2/95 GJ at 112; Livingstone 5/16/95 GJ at 26-29.

[952] W. Kennedy 3/2/95 GJ at 114; Livingstone 5/16/95 GJ at 30.

[953] W. Kennedy 3/2/95 GJ at 114; Livingstone 5/16/95 GJ at 30.

[954] Secret Service Presidential movement logs (July 21, 1993) (Doc. No. 337-DC-00000155).

[955] See W. Kennedy 5/6/94 Fiske Int. at 7; G. Kennedy 12/1/94 Fiske Int. at 3; Livingstone 7/10/95 Senate Whitewater Comm. Depo. at 57 ("The President apparently had just arrived"). In a later statement, Kennedy said he believed that they had arrived immediately before the President. W. Kennedy 3/2/95 GJ at 115.

[956] Kennedy's cellular phone records (bill dated 8/12/93) (Doc. No. 066-DC-00000019).

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route to Foster's house to call the Metropolitan Police Department.[957] The phone records show this call happened at 11:18 p.m.,[958] so that they arrived at the Fosters after 11:18 p.m.

c. The White House.

In 1993, access to Nussbaum's or Foster's offices required passing through the outer Counsel's suite reception area, located in a suite of offices on the West Wing's second floor. Three secretarial assistants -- Linda Tripp, Betsy Pond and Deborah Gorham -- and Special Assistant to the Counsel -- Thomas Castleton -- sat there. The door connected the Counsel's suite reception area with the hallway on the West Wing's second floor.[959]

Next to the Counsel's suite was the First Lady's suite of offices. The next door down the hall after the First Lady's suite was an office used by Maggie Williams.[960]

The door to the Counsel's suite had a lock;[961] in addition, an alarm system located in the Deputy Counsel's office[962] monitored the Counsel's offices.[963] The practice as of July 20, 1993 was for the alarm to be activated each night when the last person left and deactivated the following morning when the first person arrived.[964] Throughout the evening, the alarm would be

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[957] G. Kennedy 12/1/94 Int. at 2.

[958] Kennedy's cellular phone records (bill dated 8/12/93) (Doc. No. 066-DC-00000019).

[959] See Nussbaum 5/26/94 Fiske GJ at 17-18; White House West Wing diagram (as of July, 1993) (Doc. No. 105-DC-00000047).

[960] See M. Williams 5/26/94 Fiske GJ at 12-14; White House West Wing diagram (as of July, 1993) (Doc. No. 105-DC-00000047).

[961] Nussbaum 6/13/95 GJ at 167.

[962] Castleton 6/27/95 Senate Whitewater Comm. Depo. at 42.

[963] See id.

[964] Id. at 42-43.

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deactivated and reactivated by a Secret Service uniformed officer, accompanied by cleaning personnel.[965] The cleaning personnel removed the regular trash, and the Secret Service officer would collect the burn bag trash.[966]

Alarm records showed that Thomas Castleton, Special Assistant to the White House Counsel, was the last Counsel's staff member to leave the suite on July 20, 1993. At 8:04 p.m., he flipped the switch in Foster's office and called the Control Center.[967] After the alarm to the Counsel's suite was activated in the Secret Service Control Center at 9:14 p.m., there was no record of another entry until 10:42 p.m. when Henry O'Neill, a uniformed officer with the Secret Service, opened the door and deactivated the alarm.[968] The suite was open until 11:41 p.m. when O'Neill reactivated the alarm.[969]

Three White House employees testified they were in Foster's office on the night of July

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[965] To activate the alarm, a number of steps were followed. The individual leaving the Counsel's suite would flip a switch located in the Deputy Counsel's office. This individual would call the Secret Service White House Control Center to tell them that he or she has activated the alarm and was leaving. The Secret Service officer would enter the individual's name in a computer system that monitors the White House alarms. When the departing individual left the Counsel's suite, the alarm would sound in the Control Center. The Secret Service officer would reset the alarm. See Cheatham 3/8/95 Int. at 1-4; Martin 4/29/94 Fiske Int. at 4-5.

[966] O'Neill 6/6/95 GJ at 4.

[967] Secret Service alarm records (July 20, 1993) (Doc. No. 211-DC-00000034). No one in the Control Center actually reset the alarm until 9:14 p.m. Secret Service alarm records (July 20, 1993) (Doc. Nos. 211-DC-00000035 through 36). The Counsel's suite was unalarmed for 70 minutes. Castleton said he did not learn about Foster's death until the morning of July 21 when Nussbaum's secretary, Betsy Pond, called him. Castleton 4/4/95 GJ at 37; Castleton 5/3/94 Fiske Int. at 3.

[968] Secret Service alarm records (July 20, 1993) (Doc. Nos. 211-DC-00000037 through 38).

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20: Counsel to the President Bernard Nussbaum, Mrs. Clinton's Chief of Staff Margaret Williams and Director of the Office of Administration Patsy Thomasson. They arrived there differently, and each had distinct versions of the events.

i. Patsy Thomasson.

Secret Service gate records show Thomasson left the White House on July 20 at 7:49 p.m.[970] She ate dinner at the Sequoia Restaurant in Georgetown.[971] She received a page from David Watkins at 10:34 p.m.[972] to "Please page David Wat[]kins with your location number."[973] Thomasson said Watkins asked her to go to the White House and look in Foster's office for a suicide note.[974]

Watkins's initial interview with the FBI on August 5, 1993 reflects that Watkins said he learned that a suicide note had not been found from Park Police officers.[975] People at Foster's home thought it might be in his office.[976] Watkins contacted Thomasson and asked her to

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[969] See Secret Service alarm records (July 20, 1993) (Doc. No. 211-DC-00000038).

[970] White House gate records (July 20, 1993) (Doc. No. 211-DC-00001106).

[971] Thomasson 5/10/94 Fiske GJ at 14.

[972] Thomasson's White House pager records (July 20-25, 1993) (Doc. No. 210-DC-00002654).

[973] Id.

[974] Thomasson 8/3/93 FBI Int. at 1. Thomasson has consistently described her conversation with Watkins since her first interview with the FBI on August 3, 1993. See Thomasson 5/10/94 Fiske GJ at 15; Thomasson 7/11/95 GJ at 29; Thomasson 7/11/95 Senate Whitewater Comm. Depo. at 44.

[975] Watkins 8/5/93 FBI Int. at 1.

[976] Id.

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check.[977]

Thomasson took a taxi to the White House with her friends.[978] Thomasson entered the White House compound at 10:49 p.m.[979] Thomasson went to the West Wing and saw numerous White House officials, including Bernard Nussbaum.[980] Thomasson said she told Nussbaum she had come to the White House to look for a note; Nussbaum went with her to the Counsel's suite on the West Wing's second floor.[981] Thomasson said she was "sure" she went to the office with Nussbaum.[982] Nussbaum said he went to the Counsel's suite alone and found Thomasson already seated at Foster's desk when he entered Foster's office.[983] Thomasson said the Counsel's suite was open and a cleaning woman was leaving Foster's office when she and Nussbaum arrived.[984]

Thomasson testified:

> I sat down in Vince's chair and sort of just perused the top of the desk and the other pieces of furniture that were close at hand. There were no notes anywhere. I opened the drawers of Vince's desk . . . . A briefcase of Vince's was sitting on the floor by his desk. I opened the flap of that briefcase to see if anything was stuck in the top of that . . . . Sometime during that period of time, . . . [Bernie]

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[977] Id.

[978] Thomasson 7/11/95 GJ at 30.

[979] White House gate records (July 20, 1993) (Doc. No. 211-DC-00001098). Alarm records show Thomasson opened Watkins's office in the West Wing at 10:48 p.m., Secret Service alarm records (July 20, 1993) (Doc. No. 211-DC-00000038), but the gate records showed that she entered the compound at 10:49 p.m. One of the records appeared to be slightly inaccurate by a few minutes.

[980] Thomasson 7/11/95 GJ at 31.

[981] Id.

[982] Id.

[983] Nussbaum 5/26/94 Fiske GJ at 14-15.

[984] Thomasson 7/11/95 GJ at 31.

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> walked out of the room, and he hadn't been gone but a few -- not very long, a few seconds, a few minutes, something less than a few minutes. And Maggie Williams came in and sat down across from me, and she was crying, and she had Kleenex in her hand when she came in. . . . We went through this whole emotional stress how she couldn't believe that Vince had done this. . . . Maggie got up and left, and Bernie came back in. . . . [W]e both walked out together. I went in with nothing to that office. I came out with nothing from that office. . . . I did not take anything out of the briefcase. . . . [b]ut I'm sure I touched the papers in there.[985]

Thomasson said she did not see Williams or Nussbaum take anything out of Foster's office.[986] Thomasson also said Nussbaum and Williams were never in Foster's office at the same time.[987] Thomasson said she and Nussbaum left Foster's office together, but she was not certain whether Nussbaum left the Counsel's suite with her or went back into his own office.[988]

When she returned to the first floor, Thomasson paged Watkins to tell him she had not found a note.[989] Pager records show she paged Watkins twice, once at 11:36 p.m. and again at 11:59 p.m.[990] The first page said "456-7052 CALL PATSY"; the second said "456-7052 PLEASE CALL RE VINCE'S OFFICE PATSY LEE."[991] When they spoke, Thomasson told

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[985] Id. at 31-34.

[986] Thomasson 7/11/95 GJ at 34-35.

[987] Thomasson 7/11/95 Senate Whitewater Comm. Depo. at 59.

[988] Thomasson 7/11/95 GJ at 33; Thomasson 7/11/95 Senate Whitewater Comm. Depo at 99. In earlier testimony, Thomasson said she and Nussbaum went to the first floor together upon leaving Foster's office. Thomasson 5/10/94 GJ at 26.

[989] Thomasson 7/11/95 GJ at 37.

[990] See White House pager records (July 20-24, 1993) (Doc. No. 210-DC-00002693); White House pager records (July 20-27, 1993) (Doc. No. 210-DC-00002687).

[991] White House pager records (July 20-27, 1993) (Doc. No. 210-DC-00002687).

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Watkins she had not found a note in Foster's office.[992]

The report of Thomasson's first FBI interview on August 3, 1993 does not mention the briefcase.[993] In testimony on May 10, 1994, she said she "just folded the flap back to see if there was anything on top of that. There was nothing there, and I flipped it back down."[994] When asked, "Did you look into the briefcase," she said, "No."[995] In an August 31, 1994 interview with this Office, she said she opened the briefcase and saw file folders.[996] She said she did not look through all the file folders, explaining that if there was a note, she expected it would be left where it would be easy to find.[997]

In her grand jury appearance on July 11, 1995, she said she "did not take anything out [of] the briefcase. . . . but I'm sure I touched the papers in there."[998] In her Senate deposition (also July 11, 1995), Thomasson said, "I would not say I even really thumbed through them."[999] Thomasson was asked whether she tore up a note found in Foster's office, and she said she neither saw a note nor tore one up.[1000]

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[992] See Watkins 8/5/93 FBI Int. at 1; Thomasson 7/11/95 GJ at 38.

[993] See Thomasson 8/3/93 FBI Int.

[994] Thomasson 5/10/94 Fiske GJ at 30.

[995] Id.

[996] Thomasson 8/31/94 Int. at 32 (sworn testimony).

[997] Id.

[998] Thomasson 7/11/95 GJ at 34.

[999] Thomasson 7/11/95 Senate Whitewater Comm. Depo. at 94.

[1000] Thomasson 5/10/94 Fiske GJ at 42.

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ii. Bernard Nussbaum.

Nussbaum said he was eating dinner at Galileo Restaurant when he received a page from Mark Gearan,[1001] who told him about Foster's death.[1002] Nussbaum went to the ground floor of the White House where President Clinton was finishing his appearance on the "Larry King Live" show.[1003] Nussbaum briefly saw the President before the President left for the Foster house,[1004] and Nussbaum says he then went to the Counsel's suite to look for a note and make phone calls.[1005]

Nussbaum was interviewed July 21, 1993 by Park Police Captain Charles Hume and Detective Peter Markland. The USPP report said Nussbaum told them that the night before "he went through Mr. Foster's office with Patsy Thomass[o]n and Maggie Williams. Mr. [Nussbaum] stated that they conducted a brief, quick search to see if Mr. Foster may have left a suicide note on his desk. This search lasted from 2200 to 2400 hours. Mr. Nussbaum stated that no documents were removed from the office."[1006]

[1001] A page was not shown on White House pager records. See Nussbaum's White House pager records (July 20-16, 1993) (Doc. No. 210-DC-00002648).

[1002] Nussbaum 5/26/94 Fiske GJ at 12. Gate records show that Nussbaum left the White House at 6:44 p.m. White House gate records (July 20, 1993) (Doc. No. 211-DC-00001112).

[1003] Nussbaum 5/26/94 Fiske GJ at 13-14.

[1004] Id. at 14.

[1005] Id. at 14-15. A number of people confirmed that Nussbaum called them at home to tell them about Foster's death. See Neuwirth 2/28/95 GJ at 72; Sloan 4/4/95 GJ at 47.

[1006] Detective Peter Markland, U.S. Park Police Report at 1 (Aug. 5, 1993). The 2200-2400 appears to have been a mistake in recording by Markland; records showed the office was open for only an hour. See Secret Service alarm records (July 20-21, 1993) (showing the White House Counsel's suite was opened at 22:42 and closed at 23:42) (Doc. Nos. 211-DC-00000037 through 38). Moreover, the report itself said Nussbaum referred to a "brief, quick search," which

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Nussbaum was again interviewed on May 13, 1994, by investigators from Mr. Fiske's office:

> It occurred to him that it would be a good idea to look for a note. At approximately 10:00 p.m., he went up to his office, entered FOSTER's office and saw PATSY THOMASSON sitting at FOSTER's desk. MAGGIE WILLIAMS was sitting on the couch crying. NUSSBAUM stood by FOSTER's desk and looked at the top of the desk. THOMASSON opened a few drawers. They were looking at surfaces. They were looking for something noticeable; not a briefcase and not into anything very deeply. MAGGIE WILLIAMS was "'a basketcase.'" She was not looking for anything.[1007]

Nussbaum estimated that he was there for less than ten minutes[1008] and all three people left Foster's office at the same time.[1009] They did not take anything with them.[1010] They did not find anything that helped to explain Foster's suicide.[1011]

About whether files or documents were removed from Foster's office, Nussbaum said in his first Foster-related appearance in the grand jury, "I have no recollection that they [Williams and Thomasson] had any files or papers with them at that time."[1012] Asked whether he "recall[ed] them having any sort of documents, file folders, papers, anything of that nature in their arms when they were in or around Mr. Foster's office," he said, "No."[1013] He also said:

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appeared inconsistent with a two-hour period. Detective Peter Markland, U.S. Park Police Report at 1 (Aug. 5, 1993).

[1007] Nussbaum 5/13/94 Fiske Int. at 6-7.

[1008] Nussbaum 5/26/94 Fiske GJ at 72; Nussbaum 5/13/94 Fiske Int. at 7.

[1009] Nussbaum 6/13/95 GJ at 152; Nussbaum 5/13/94 Fiske Int. at 7.

[1010] Nussbaum 5/26/95 GJ at 24; Nussbaum 5/13/94 Fiske Int. at 7.

[1011] Nussbaum 5/13/94 Fiske Int. at 7.

[1012] Nussbaum 5/26/94 Fiske GJ at 21.

[1013] Id. at 22-23.

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I just don't remember whether they did or they didn't, or whether they had something of their own. You know, somebody could be walking around with his own file, walking into the [O]val [O]ffice, looking for a note and walking out, you know, with their files. But I was positive, you know, that . . . I would have remembered very clearly if they had taken something out of that office, out of Foster's office. And I don't remember. . . . [T]o my recollection they did not take anything out of that office, out of Foster's office.[1014]

Before the grand jury on June 13, 1995, Nussbaum elaborated:

I don't remember them picking anything up, or taking anything out of the office. I would have seen it if they took something out, you know. I guess somebody could secret something if they wanted to, but I didn't -- you know -- I didn't see anything. I mean, I trusted them. . . . [N]obody said "I want to take a file," or "I want to take this, I want to --" because I wouldn't let anybody do that anyway. This was -- you know, this is my suite and I've got control of the office. So we all go out together.[1015]

Nussbaum remembered that after they all left he went to his office to make telephone calls to tell his staff and others about Foster's death,[1016] whereas Thomasson and Williams left the Counsel's suite.[1017]

iii. Maggie Williams.

Maggie Williams said she learned about Foster's death from Mrs. Clinton.[1018] Both Mrs. Clinton and Williams said Mrs. Clinton did not ask Williams to go to the White House or

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[1014] Id. at 24.

[1015] Nussbaum 6/13/95 GJ at 152.

[1016] Id. at 153.

[1017] Id.

[1018] M. Williams 5/26/94 Fiske GJ at 7. Phone records show a call from Dorothy Rodham's residence in Little Rock to Maggie Williams's home in Washington at 10:13 p.m. for 16 minutes. Dorothy Rodham's phone records (bill dated Aug. 3, 1993) (Doc. No. 065-DC-00000009).

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perform any task.[1019] Williams then called Evelyn Lieberman, Assistant to the Chief of Staff to the First Lady,[1020] and told her about Foster's death and said she wanted to go to the White House.[1021] Lieberman picked Williams up.[1022] When they arrived, they went to the First Lady's office on the West Wing's second floor.[1023] Lieberman said she sat at the reception desk in the First Lady's office.[1024]

The FBI first interviewed Williams on August 3, 1993.[1025] Williams said she went to the White House to get the First Lady's schedule for July 21, 1993 to see if any scheduled events needed to be cancelled.[1026] Williams arrived at approximately 11:00 p.m.[1027] After speaking with people in the Press Office, she went to Foster's office and saw Thomasson sitting at his desk.[1028] Williams said Thomasson conducted a cursory search of papers on the desk, looking for a note.[1029] In the approximately ten minutes Williams was in Foster's office, she said she did not

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[1019] H. Clinton 6/12/94 Fiske Depo. at 17; M. Williams 5/25/94 Fiske Int. at 3.

[1020] M. Williams 5/26/94 Fiske GJ at 10.

[1021] Id.

[1022] Id. at 11; Lieberman 7/26/94 Fiske Int. at 13-14 (sworn testimony).

[1023] M. Williams 5/26/94 Fiske GJ at 11; Lieberman 7/26/94 Fiske Int. at 19-20 (sworn testimony). The entrance to the First Lady's office was located next to the entrance to the Counsel's suite of offices.

[1024] Lieberman 7/26/94 Fiske Int. at 20 (sworn testimony).

[1025] See M. Williams 8/3/93 FBI Int.

[1026] M. Williams 8/3/93 FBI Int. at 1.

[1027] Id.

[1028] Id.

[1029] Id.

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see Thomasson find a note.[1030] Thomasson remained in Foster's office after Williams left.[1031] In later statements, Williams remembered that Nussbaum came into Foster's office "a few seconds" after she did.[1032]

Williams was questioned on whether she removed documents from Foster's office on July 20. Williams denied doing so.[1033] Williams took an FBI polygraph examination on September 16, 1994, and twice denied removing any documents from Foster's office the evening of his death or in the early morning. The FBI polygraph examiner concluded that Williams was being truthful, which the FBI Laboratory also confirmed.[1034]

Williams tried to remember whether she may have carried something into Foster's office that she was still carrying when she left. Williams said at some point that night she went to Mark Gearan's office on the first floor to get a copy of the press release about Foster's death.[1035] Williams also said she may have gone to her own office on the West Wing's second floor to get a copy of the First Lady's schedule for the following day,[1036] but she did not believe she was

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[1030] Id.

[1031] Id.

[1032] M. Williams 6/2/95 GJ at 25. Thomasson said Nussbaum and Williams were never in Foster's office at the same time. Thomasson 7/11/95 Senate Whitewater Comm. Depo. at 59.

[1033] See M. Williams 5/26/94 Fiske GJ at 27; M. Williams 6/2/95 GJ at 28; M. Williams 7/7/95 Senate Whitewater Comm. Depo. at 53-54; Senate Whitewater Comm. Hearing, supra note 408, at 162 (Jul. 26, 1995) (testimony of M. Williams); M. Williams 5/25/94 Fiske Int. at 4.

[1034] FBI Polygraph Report of Margaret Williams at 3-4 (Sept. 16, 1994).

[1035] M. Williams 5/26/94 Fiske GJ at 16; M. Williams 5/25/94 Fiske Int. at 3.

[1036] M. Williams 5/26/94 Fiske GJ at 18-19.

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carrying either of these items, or anything else, when she went into Foster's office.[1037]

iv. Henry O'Neill.

Officer Henry O'Neill has been employed as a uniformed Secret Service officer since 1977.[1038] At the time of Foster's death, he was assigned as an escort officer on the 10:30 p.m. through 7:00 a.m. shift.[1039] His primary responsibility was to accompany General Services Administration cleaning crews to offices in the White House West Wing.[1040] O'Neill collected burn bags with sensitive or classified waste.[1041]

Alarm records show that on July 20, Officer O'Neill entered the Counsel's suite of offices at 10:42 p.m., and re-set the alarm at 11:41 p.m.[1042] He was accompanying two female cleaning workers as they picked up trash in the West Wing offices.[1043]

Officer O'Neill said he saw Maggie Williams leaving the Counsel's suite of offices carrying documents.[1044] O'Neill said while he was in the Counsel's suite to collect the burn bags, he saw two women enter the Counsel's suite with Nussbaum.[1045] He left the suite, but later

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[1037] Id. at 27.

[1038] O'Neill 6/6/95 GJ at 2.

[1039] O'Neill 6/8/94 Fiske Int. at 1.

[1040] Id.

[1041] Id.

[1042] Secret Service alarm records (July 20-21, 1993) (Doc. Nos. 211-DC-00000037 through 38).

[1043] O'Neill 6/6/95 GJ at 7-8.

[1044] Id. at 14-15.

[1045] Id. at 8.

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returned[1046] and saw a woman sitting behind Foster's desk.[1047] He left again and later, while in the hallway outside the suite, saw Maggie Williams and another woman[1048] leaving the Counsel's office, with Williams carrying folders or files of some sort to her office.[1049]

O'Neill was confused when interviewed about the identities of the women, other than Maggie Williams, in and around the Counsel's suite at various points. In his Senate deposition in 1995, he also showed confusion about whether Williams was carrying something in addition to what appeared to be folders or documents.

April 28, 1994 Interview:

> [After entering the suite], he turned to see a man that he recognized as Bernard Nussbaum, another man whom he did not recognize, Margaret "Maggie" Williams, of Hillary Clinton's staff, and another woman whom he thinks was Patsy Thomasson. . . . He and the cleaning crew stepped out of the suite into the hall and he asked the man who was a part of this group "what seems to be the problem?" He said that this man introduced himself as a White House staffer in charge of legislative affairs . . . and now knows that this man was Howard Paster. This man then advised Officer O'Neill "something terrible has happened -- Vince Foster has taken his own life." This man, Nussbaum, and the two women went into Nussbaum's office. Shortly after this encounter, the second woman (not Maggie Williams) introduced herself to him. He said that, while he is not entirely certain, he believes that she said her name was Patsy Thomasson. She also told him Maggie Williams' name and that Williams was a staffer for Hillary Clinton.[1050]

According to the report, O'Neill re-entered the suite a few minutes later and:

> [S]aw a third woman sitting behind Vincent Foster's desk in a chair going through

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[1046] Id. 8, 10-11.

[1047] Id. at 11.

[1048] Id. at 13-14.

[1049] Id. at 14.

[1050] O'Neill 4/28/94 Fiske Int. at 1-2.

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> papers on his desk as if she were looking for something. He said that this woman was alone in Vincent Foster's office when he saw her. He advised that he did not recognize this woman and added that it was not Maggie Williams nor was it the woman he met and thought to be Patsy Thomasson.[1051]

In this interview, O'Neill described this third woman as a white female, approximately 5'6" to 5'8", slender to medium build, dark brown or black hair, light complexion, and in her mid-forties. He described Patsy Thomasson separately in that interview as a white female, 5'5" to 5'6", slender to medium build, brown with some gray hair, medium complexion with blemished appearance, and forty to forty-five years old.[1052]

The report of O'Neill's interview further reflected:

> At one point, about 30 minutes after he saw the woman behind Foster's desk, while he was standing in the hallway outside the entrance to the suite, he observed Patsy Thomasson and Maggie Williams walking out of the suite and turn toward the office of the First Lady next door to the suite. He said that while Patsy Thomasson's hands were empty, Maggie Williams was carrying a significant quantity of "office stuff." Officer O'Neill said that she "had her arms full" of papers, folders, and perhaps accordion files, and other office related paper products. He advised that he watched Maggie Williams walk into her (Williams) office with these items. He then saw her exit her office almost immediately with nothing in her hands and re-enter the Counsel suite. Patsy Thomasson did not go into Williams' office with her but went elsewhere down the hall. Officer O'Neill advised that after perhaps forty to forty-five minutes, but less than one hour, he observed Bernard Nussbaum, Maggie Williams, and the woman he thought to be Patsy Thomasson exit the suite. Bernard Nussbaum went down the staircase. He said that at that point the woman he thinks to have been Patsy Thomasson asked him to lock up the suite which he did. He then rode down the elevator with her and Maggie Williams to the ground level and watched them exit the [W]est [W]ing.[1053]

[1051] Id. at 2.

[1052] Id. at 2, 4.

[1053] Id. at 2-3 (emphasis added).

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The report of his first interview also reflects O'Neill stating that when continuing his security rounds later that night on the West Wing's ground floor, he again saw the woman that he had previously seen sitting behind Foster's desk, standing in the doorway of Watkins's office.[1054]

June 8, 1994 Interview -- The report of a June 8, 1994 interview reflects that O'Neill said that he was "'100 percent sure this woman was not PATSY THOMASSON.'"[1055] He also said he did not see Patsy Thomasson in Foster's office.[1056]

June 9, 1994 Interview -- One day later, O'Neill called Mr. Fiske's office and said he obtained and reviewed photographs after the June 8 interview.[1057] According to the report of interview, O'Neill said he "now believes that it is possible that PATSY THOMASSON was the woman sitting behind the desk."[1058] The report also reflected that after O'Neill reviewed photographs of Susan Thomases, he believed she may have been the woman who introduced herself to him in the second floor West Wing hallway during the late evening hours of July 20, 1993.[1059] Travel, phone and pager records and testimony, however, show that Thomases was in New York.[1060]

[1054] Id. at 3.

[1055] O'Neill 6/8/94 Fiske Int. at 2 (emphasis added).

[1056] Id. at 3.

[1057] O'Neill 6/9/94 Fiske Int. at 1.

[1058] O'Neill 6/9/94 Fiske Int. at 1 (emphasis added).

[1059] O'Neill 6/9/94 Fiske Int. at 1.

[1060] For example, Williams received a page at 12:15 a.m. saying "pls call Susan Thomas[e]s at 212-772-6019." M. Williams's White House pager records (July 20-24, 1993) (Doc. No. 210-DC-00002660); see also Thomases 5/2/96 GJ at 10; Thomases 7/17/95 Senate Whitewater Comm. Depo. at 50. Dorothy Rodham's phone records (bill dated Aug. 3, 1993)

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June 16, 1994 Interview -- O'Neill was shown photographs by investigating agents. He identified photographs of Bernard Nussbaum, Howard Paster and Margaret Williams.[1061] He was unable to identify Patsy Thomasson.[1062] The report said "while he is still not certain as to the identity of the woman he saw sitting in a chair behind VINCENT FOSTER's desk, he believes 'it is possible' that PATSY THOMASSON was that woman."[1063] The report repeated O'Neill's belief that it was Susan Thomases who introduced herself to him on the West Wing's second floor hallway.[1064]

July 20 & 26, 1994 Interviews -- O'Neill was interviewed by Mr. Fiske's office to "clarify, resolve and finalize questions and issues that have arisen as a result of the information he provided during prior interviews."[1065] The interview report contained the following summary: After walking into the Counsel's suite initially, O'Neill saw Nussbaum enter with two other people, he believes women. O'Neill was unsure about the identities of the two women with Nussbaum.[1066] O'Neill left the suite and walked down the hall and then walked back into the Counsel's suite. At this time, he saw Howard Paster (then Director of Legislative Affairs) in the hall, and Paster told him about Foster's death. O'Neill could not say whether Paster entered the

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(Doc. No. 065-DC-00000009), showed a 20-minute call 11:19 p.m. from Hillary Clinton in Little Rock to Thomases in New York.

[1061] O'Neill 6/16/94 Fiske Int. at 1.

[1062] Id. at 2.

[1063] Id. at 2.

[1064] O'Neill 6/16/94 Fiske Int. at 2.

[1065] O'Neill 7/20 & 26/94 Fiske Int. at 1.

[1066] Id. at 2.

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suite.[1067]

O'Neill also said he saw a woman in the hall, who he believed was Susan Thomases. O'Neill went downstairs with this woman and then returned to the Counsel's suite to see if he could secure the office. He walked into the suite and noticed a woman behind Foster's desk.

According to the interview report, O'Neill also explained:

> [I]nitially he was unable to identify this woman [behind Foster's desk] but now feels fairly certain that she is identical to Patsy Thomasson, a White House staff person. He stated that back in July of 1993, he did not make any effort to identify these people. After having been interviewed by the Independent Counsel's office, he did review photographs available to him of all White House staffers and felt fairly certain that it was Patsy Thomasson who he observed behind Foster's desk that evening.
>
> O'Neill stated that after leaving the Chief Counsel's suite of offices, he can't recall where he went but he did not remain close to or in view of the entrance to the Chief Counsel's suite of offices. He returned to that area approximately 10 or 15 minutes later (approximately 11:30 p.m.) and was standing in the hall near the entrance when he observed Mr. Nussbaum exit the Chief Counsel suite and leave the second floor. He can't say for sure but he believes Mr. Nussbaum took the stairway down. As Mr. Nussbaum was leaving, the same woman that he saw earlier in the evening, who he now believes may be Susan Thomases, was standing in the area, either in the hallway or by the entrance way to the Chief Counsel's office.
>
> At this point in time, a woman who he recognized as Maggie Williams . . . walked out of the Chief Counsel's office space into the hall. . . . Ms. Williams was carrying some files and folders in her arms. He estimated that the files and folders in her arms were three to five inches in height. As best he recalls, Maggie Williams remarked to the other woman words to the effect that she was just going to put these in her office and then walked past him and the doorway to the First Lady's office, stopping at the doorway to her own office.[1068]

[1067] Id. at 2-3. Paster said he did not remember actually entering the Counsel's suite that evening. Paster 5/13/94 Fiske Int. at 3.

[1068] O'Neill 7/20 & 26/94 Fiske Int. at 3-5 (emphasis added).

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O'Neill said Williams put the materials in her office and left empty-handed, at which time she and the other woman went to the elevator.[1069] Later that night, O'Neill saw Patsy Thomasson standing in the doorway to David Watkins's office.[1070] O'Neill remembered that she was upset and distraught.[1071]

During this interview, O'Neill was shown photos of Evelyn Lieberman and Patsy Thomasson. He said Lieberman "looked similar" to the woman he saw that night in the hallway (previously the "Susan Thomases" woman) and he identified Thomasson as the woman behind the desk.[1072]

O'Neill was asked why he never reported the information about Williams to his superiors or to law enforcement before April 1994. According to the interview report, he said "until he was approached by investigators from the Independent Counsel's office in late April 1994, he had never been asked any questions or discussed his observations and conversations on the night of July 20-21, 1993 with anyone. He stated that he wasn't quite sure of the significance of these observations and was not about to volunteer it to anyone."[1073]

August 9, 1994 Interview -- O'Neill was shown several photographs, one of which was a photograph of Susan Thomases. He picked out her photograph and according to the interview report, said he felt "fairly certain that THOMASES is the woman who was with and left with

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[1069] Id. at 5.

[1070] Id.

[1071] Id.

[1072] Id. at 7.

[1073] Id. at 6.

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MAGGIE WILLIAMS from the second floor . . . on July 20, 1993."[1074] When asked whether he might be confused about dates and nights, O'Neill also said he remembered the Paster conversation about Foster's death occurring the same night that he saw Williams carrying items out of the Counsel's suite.[1075]

Grand Jury June 6, 1995 -- O'Neill made one new relevant statement during this appearance before the grand jury. O'Neill said he now believed the woman sitting behind Foster's desk was Patsy Thomasson.[1076] As for the woman in the hallway when Williams was leaving the suite, who O'Neill first identified as Thomasson and then as Thomases, O'Neill testified he now believed it was Evelyn Lieberman.[1077]

Senate Deposition June 23, 1995 -- O'Neill testified in a Senate deposition consistently with his earlier testimony, except that he did not show any of his earlier confusion about the identity of various people he saw.[1078] Near the conclusion of his examination by counsel for the Senate minority, O'Neill said he remembered only that Maggie Williams was carrying something in front of her: "I remember that she was carrying something in front of her. I think I remember folders as I saw her approach in my direction, and it was like folders. But I can't remember if there was a box on top of them, like a cardboard box that is used for files also."[1079] He also did

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[1074] O'Neill 8/9/94 Int. at 2.

[1075] Id. at 1.

[1076] O'Neill 6/6/95 GJ at 22-23.

[1077] Id. at 23.

[1078] Susan Thomases did not come up at all in his Senate deposition. See, e.g., O'Neill 6/23/95 Senate Whitewater Comm. Depo. at 174-77.

[1079] O'Neill 6/23/95 Senate Whitewater Comm. Depo. at 175.

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not know where the folder or box came from, or whether Williams had these things with her when she went into the counsel's office.[1080]

Senate Hearing July 26, 1995 -- Testifying before the Senate Whitewater Committee, counsel for the Senate minority first raised questions -- based on the number of interviews O'Neill said he had undergone with Mr. Fiske's office -- about whether O'Neill was consistent in his previous statements. O'Neill said although he knew Williams and Nussbaum, he did not know Thomasson or Lieberman.[1081]

v. Other Evidence about O'Neill and Williams.

Nussbaum and Thomasson said they did not see Williams take anything out of the office.[1082] Evelyn Lieberman, who sat at a desk in the First Lady's office after arriving at the White House with Maggie Williams,[1083] said she did not see Williams carrying a box or pile of papers or folders.[1084] She also did not see Williams go into her own [Williams's] office that evening.[1085]

Terri Cobey, part of the White House cleaning crew on duty that night, remembered a black female and a white female walking, on at least two occasions, between the Counsel's office

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[1080] Id. at 177.

[1081] Senate Whitewater Comm. Hearing, supra note 408, at 33 (Jul. 26, 1995) (testimony of H. O'Neill).

[1082] Nussbaum 6/13/95 GJ at 152; Thomasson 7/11/95 GJ at 34-35.

[1083] Lieberman 7/26/94 Fiske Int. at 20 (sworn testimony). Lieberman believed it was "possible" that she went into the Counsel's suite at some point that evening. However, she said, "I don't think I did." Id. at 29.

[1084] Lieberman 6/13/94 Fiske Int. at 4.

[1085] Id.

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and the First Lady's office.[1086] Her interview report said "[s]he was unable to state whether either of these women were carrying any type of paper or documents or files while they were walking between the two offices."[1087] When Cobey was asked in the grand jury whether she saw any individual carrying documents or papers or files out of Mr. Foster's office or out of the Counsel's suite of offices that night, she said no.[1088]

O'Neill said in the Senate hearing that Williams gave him a "glancing smile" when introduced to him in the hall.[1089] He also said from Williams's appearance "nothing registered to me that she was upset at that point."[1090] Testimony from other people described Williams as sobbing.[1091]

vi. Telephone Conversations the Evening of July 20 and Early Morning Hours of July 21.

Phone records establish several phone calls between Mrs. Clinton, Maggie Williams, and Susan Thomases on the evening of July 20 and early morning hours of July 21. This sequence of telephone calls led to an inquiry into whether they discussed Foster's office or any documents in his office.

[1086] Cobey 8/5/94 Int. at 2.

[1087] Id.

[1088] Cobey 6/14/95 GJ at 10.

[1089] Senate Whitewater Comm. Hearing, supra note 408, at 118-19 (Jul. 26, 1995) (testimony of H. O'Neill).

[1090] Id. at 118 (testimony of H. O'Neill).

[1091] See, e.g., Nussbaum 6/13/95 GJ at 150 ("Maggie was sitting on the couch crying, she wasn't functioning at all"); Nussbaum 5/13/94 Fiske Int. at 7 ("Maggie Williams was 'a basketcase.' She was not looking for anything"); Thomasson 7/11/95 GJ at 32 ("Maggie was crying"); Cobey 7/14/94 Senate Banking Comm. Depo. at 37 ("I think that [she] was crying").

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July 20-21

TIME	ACTIVITIES
10:13 p.m.	Sixteen-minute call made from Dorothy Rodham's residence in Little Rock (where Mrs. Clinton was staying) to Williams's residence[1092]
11:19 p.m.	Twenty-minute call made from Dorothy Rodham's residence to Thomases's residence[1093]
12:15 a.m.	Williams received a page asking her to "PLS CALL SUSAN THOMAS[E]S at 212-772-6019"[1094]
12:56 a.m.	Eleven-minute call made from Williams's residence to Dorothy Rodham's residence[1095]
1:10 a.m.	Fourteen-minute call made from Williams's residence to Thomases's residence[1096]

Mrs. Clinton testified in July 1995 about the evening of Vince Foster's death on July 20, 1993. Mrs. Clinton said:

> I was not thinking about documents in Mr. Foster's office. I mean, that is something that I don't think crossed my mind at all. Having heard that my friend was dead, I don't think that's what I was thinking about.[1097]

She also said she did not remember talking to Williams or Thomases about Foster's

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[1092] Dorothy Rodham's phone records (bill dated July 23, 1993) (Doc. No. 065-DC-00000009).

[1093] Id.

[1094] M. Williams's White House pager records (July 20-24, 1993) (Doc. No. 210-DC-00002660).

[1095] M. Williams's phone records (bill dated Aug. 29, 1993) (Doc. No. 055-DC-00000008).

[1096] Id.

[1097] H. Clinton 7/22/95 Depo. at 22.

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documents or office on July 20.[1098]

Thomases said that in her conversation with Mrs. Clinton, there was no discussion of documents in Foster's office.[1099] Thomases said it was possible that she spoke with Williams that night, but she said she had no independent memory of it.[1100]

Williams said the subject of Foster's office and documents did not arise in conversations with Thomases or Mrs. Clinton.[1101] Williams remembered both the fact and the general substance of her calls with Mrs. Clinton that evening and said the subject of Foster's office or documents did not arise.[1102] Williams said she was not able to remember any conversation with Thomases that evening.[1103]

In addition to calling Williams and Thomases, Mrs. Clinton placed a call to the home of Harry Thomason in California at 11:03 p.m.[1104] Mrs. Clinton testified in the grand jury that she did not remember talking to Thomason that night, but that she was "trying to inform people that I thought would want to know about Vince's death before they heard it on the television."[1105]

[1098] Id. at 17, 19-20, 22.

[1099] Thomases 9/9/94 Fiske Int. at 32 (sworn testimony).

[1100] Id. at 37 (sworn testimony); Thomases 7/17/95 Depo. at 60.

[1101] M. Williams 5/26/94 Fiske GJ at 8, 34-35.

[1102] Id. at 32-35; M. Williams 6/2/95 GJ at 18-20; Senate Whitewater Comm. Hearing, supra note 408, at 79-80 (Nov. 2, 1995) (testimony of M. Williams).

[1103] See Senate Whitewater Comm. Hearing, supra note 408, at 13-14 (Nov. 2, 1995) (testimony of M. Williams); M. Williams 7/7/95 Senate Whitewater Comm. Depo. at 57.

[1104] Dorothy Rodham's phone records (bill dated July 23, 1993) (Doc. No. 065-DC-00000009).

[1105] H. Clinton 1/26/96 GJ at 86.

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Telephone records also showed a ten-minute call from Dorothy Rodham's residence to telephone number (202) 628-7087 at 10:41 p.m. on July 20.[1106] After much publicity about the telephone company's inability to identify this telephone number,[1107] Mrs. Clinton submitted in December 1995, a sworn affidavit to the Senate Whitewater Committee, stating that she did not remember calling that number on July 20.[1108] The White House said the telephone number was "an unlisted trunk line that rang on the White House switchboard. . . . The number was installed as a bypass to the main White House switch, so that calls could be made from the White House in the event the main switch failed. The number was also used as a means to get through to the White House when the switchboard was overloaded, and were provided to certain individuals for that purpose."[1109] The White House reported that Bill Burton received a call from Mrs. Clinton on the night of July 20.[1110]

Burton testified in March 1995 before the grand jury that he remembered a telephone

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[1106] Dorothy Rodham's phone records (bill dated July 23, 1993) (Doc. No. 065-DC-00000009).

[1107] See Sara Fritz, Whitewater Panel Probes First Lady's Mystery Phone Call; Inquiry: Senators submit written questions asking her to help identify number she apparently dialed after the death of Vincent Foster, L. A. Times, Dec. 1, 1995, at A6; Pete Yost, White House Dispute With D'Amato Over Whitewater Subpoena Narrows, A.P., Dec. 13, 1995; Whitewater panel to question attorney White House says lawyer reviewed Foster files, The Fort Worth Star-Telegram, Dec. 1, 1995 ("the White House said yesterday that Hillary Clinton will respond in writing to questions about a telephone number that was called the night about Foster's death from her mother's home in Little Rock, Ark., where Clinton was staying. Phone company records do not identify to whom the now-disconnected number belonged").

[1108] H. Clinton 12/7/95 Aff. at 2.

[1109] Letter from Jane Sherburne, Associate White House Counsel to Michael Chertoff, Senate Whitewater Committee Special Counsel, and Richard Ben-Veniste, Senate Whitewater Committee Minority Special Counsel (Dec. 7, 1995).

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conversation with Mrs. Clinton that night.[1111] Burton said he had a personal conversation with her about Foster's death: "It was more a conversation you might have with a close friend after a close mutual friend has passed away."[1112] Burton gave similar testimony in the Senate following the revelation about the White House telephone number.[1113] Burton said he and Mrs. Clinton talked about notifying people in Arkansas about Foster's death and about the details the Park Police had provided concerning the death.[1114]

4. The Trash from Foster's Office.

When the cleaning crew went to the Counsel's suite, they removed the trash.[1115] Sylvia Mathews, Special Assistant for Robert Rubin, later asked Bill Burton, Dee Dee Myers and David Dreyer (then Deputy White House Communications Director) whether the trash in Foster's office should be retrieved.[1116] Notes she prepared within a week to ten days of the incident[1117] show that Burton agreed they needed to retrieve the trash.[1118] Mathews located the cleaning crew, who took

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[1110] Id.

[1111] Burton 3/22/95 GJ at 67.

[1112] Id. at 68.

[1113] Senate Whitewater Comm. Hearing, supra note 408, at 41-42 (testimony of W. Burton).

[1114] Id. at 50-51, 56.

[1115] Cobey 6/14/95 GJ at 7; D. Walters 6/21/95 GJ at 5.

[1116] Mathews 4/5/95 GJ at 11.

[1117] Id. at 32.

[1118] Mathews's typewritten notes (created the week after July 20, 1993) (Doc. No. 033-DC-00000620); see also Mathews 4/5/95 GJ at 11.

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her to where they had dumped the trash.[1119] Mathews retrieved Foster's trash and stored it in Deputy Chief of Staff Roy Neel's office that night.[1120] Associate Counsel Cliff Sloan said he retrieved the bag from Neel's office the next day.[1121] Secret Service records show Sloan put the bag back in Foster's office at 6:34 p.m.[1122] Foster family attorney Michael Spafford's notes show the trash was reviewed during the search on July 22.[1123]

Mathews also made efforts to determine whether Foster's burn bag was emptied.[1124] After she retrieved the commingled burn bag for all West Wing offices from Officer O'Neill,[1125] Gene Sperling (then Deputy Assistant to the President for Economic Policy) told her that she probably should not be examining sensitive and confidential burn bag material.[1126] Mathews said Nussbaum later told her Foster did not have a burn bag in his office, so the burn bag material she had retrieved could be returned to the Secret Service.[1127] Nussbaum did not remember any conversations about the burn bag with Mathews; he remembered discussing only trash with

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[1119] Mathews's typewritten notes (created the week after July 20, 1993) (Doc. No. 033-DC-00000620); see also Mathews 4/5/95 GJ at 11-12.

[1120] Mathews 4/5/95 GJ at 16; see Neel 5/25/94 Fiske Int. at 3 ("When Neel arrived at his office the following morning . . . he found an opaque plastic bag of trash which had been tied up in the middle of his desk").

[1121] Sloan 5/11/94 Fiske Int. at 11.

[1122] Secret Service handwritten log of persons entering Foster's office (July 21-22, 1993) (Doc. No. 211-DC-00000151).

[1123] Spafford's handwritten notes (July 22, 1993) (Doc. No. 296-DC-00000018).

[1124] Mathews 4/5/95 GJ at 18-19.

[1125] Id. at 20; see O'Neill 6/6/95 GJ at 16.

[1126] Mathews 4/5/95 GJ at 21; Sperling 12/20/94 Int. at 7.

[1127] Mathews 4/5/95 GJ at 21-22.

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her.[1128] Although Foster apparently had a burn bag in his office,[1129] O'Neill said he did not empty Foster's burn bag that evening.[1130] The burn bag from Foster's office remained in his office and was reviewed by Nussbaum on July 22 during his search.[1131]

5. Betsy Pond Entered Foster's Office on the Morning of July 21.

On the morning of July 21, alarm records show that Nussbaum's secretary, Betsy Pond, opened the Counsel's suite at 7:01 a.m.[1132] Pond said before anyone else arrived, she entered Foster's unsecured office to look around and straighten up.[1133] Linda Tripp, another secretary in the Counsel's suite, said Pond told her on July 21 that she even looked for a note in Foster's office.[1134] Tripp said Pond "was concerned that it would appear questionable," so Pond would tell investigators that she entered simply to straighten up.[1135] Pond denied saying this.[1136]

6. Craig Livingstone's Activities on July 21.

The morning of July 21, Officer Bruce E. Abbott of the Uniformed Division of the Secret

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[1128] Nussbaum 7/12/95 Senate Whitewater Comm. Depo. at 54.

[1129] See Gorham 3/16/95 Int. at 7.

[1130] O'Neill 6/6/95 Int. at 16.

[1131] See Spafford's handwritten notes (July 22, 1993) (Doc. No. 296-DC-00000021).

[1132] Secret Service alarm records (July 21, 1993) (Doc. No. 211-DC-00000042).

[1133] Pond 4/26/95 GJ at 43; Captain Charles Hume, U.S. Park Police Report at 2 (Aug. 4, 1993) ("She went into his office and 'squashed' the papers together that were on his desk"). Nussbaum informed the Park Police on July 21, 1993, that "he learned that from about 0700-0715 hours one of the secretaries had entered Mr. Foster's office and 'piled papers' on his desk top 'to make it neat.'" Detective Peter Markland, U.S. Park Police Report at 1 (Aug. 5, 1993).

[1134] Tripp 6/21/95 GJ at 11-12.

[1135] Id. at 12.

[1136] Pond 4/13/95 Int. at 2-3. Pond was found "not deceptive" in a polygraph exam on

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Service was assigned to work the 6:30 a.m. to 3:00 p.m. shift at Post E-1 on the ground floor entrance to the West Wing.[1137] Shortly before his shift began, Abbott learned about Foster's death.[1138]

Abbott said shortly after he assumed his post,[1139] he heard the elevator door near his post[1140] and saw two men get out, Craig Livingstone and another man unknown to him.[1141] Abbott saw the man he did not recognize carrying a cardboard box with an open top.[1142] The box contained several dark-colored loose-leaf binders.[1143] Livingstone carried a briefcase, possibly brown in color.[1144] The two men walked past him and out the West Wing door.[1145]

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this issue. Pond FBI Polygraph Report at 7-8 (May 31, 1994).

[1137] Abbott 6/14/95 GJ at 5-7.

[1138] Id. at 5.

[1139] Abbott initially identified the time as 6:45 to 6:50 a.m. Abbott 4/18/94 Fiske Int. at 2. Abbott subsequently said that he might have seen the men as late as 8:30 a.m. Abbott 6/14/95 GJ at 17; Abbott 10/12/94 Int. at 2. He also said "given that my initial request to recollect the times was nine months, or approximately nine months after they occurred, I was unable to be certain of the time, other than to say it was in the morning." Abbott 6/14/95 GJ at 17. He did not think "that the time was significant when I talked to Inspector Martin [on the morning of the 21st] -- only the observation of what I had seen, not that the time was critical, because I was unaware of any factors involving time." Id.

[1140] Abbott 4/18/94 Fiske Int. at 2.

[1141] Id. Abbott was shown 212 photographs of male White House employees and identified Livingstone as the man with the briefcase. He could not identify the other man. Abbott 6/22/94 Fiske Int. at 4.

[1142] Abbott 4/18/94 Fiske Int. at 2.

[1143] Id.

[1144] Id.

[1145] Abbott 6/14/95 GJ at 20.

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Abbott reported this to Secret Service Inspector Dennis Martin.[1146] Martin thought Abbott provided this information in front of Park Police investigators.[1147] Park Police Captain Hume said Martin escorted him and Park Police Detective Peter Markland that morning when they arrived at the White House to gain access to Foster's office.[1148] Markland remembered Abbott telling him he saw Livingstone with a box of documents earlier that morning.[1149]

Later that day, when Markland questioned Livingstone, Livingstone said he had not been in Foster's office or carried documents from Foster's office, although he might have been carrying documents.[1150] Markland said Livingstone showed "no surprise or apprehension" when told he had been seen carrying a box from the White House's second floor.[1151]

[1146] Id. at 12. According to a report of his interview, Martin said:

> [A]s he was escorting U.S. Park Police officers either in or out of the [W]est [W]ing, Officer Abbott approached. . . . Abbott spoke to him in a low confidential voice relating to him that earlier that morning (approximately 6:30-7:00 a.m.) he had seen Craig Livingstone and another man (identity unknown) on the ground floor of [t]he White House West Wing having just gotten off the elevator . . . . Abbott said that he saw these two men carrying a briefcase and some boxes."

Martin 4/29/94 Fiske Int. at 3.

[1147] Martin 4/29/94 Fiske Int. at 3.

[1148] Hume 5/23/95 GJ at 8.

[1149] Markland 7/11/94 Fiske Int. at 1.

[1150] Markland 5/23/95 GJ at 14; Markland 7/11/94 Fiske Int. at 2. Markland wrote the statement "Livingstone [said] he was not in office today" in his notes. Markland's handwritten notes (July 21, 1993) (Doc. No. 105-DC-00000347). Markland did not produce a report recounting the information provided by Abbott. See Markland 7/11/94 Fiske Int. at 1.

[1151] Markland 7/11/94 Fiske Int. at 3.

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Gate records showed Livingstone entered the White House at 8:06 a.m. on July 21.[1152] Livingstone said he was not in the White House before 8:06 a.m.; he had gone to Foster's house early that morning.[1153] Livingstone said "[b]y coming there [Foster's house] early he hoped to assure that any members of the media who were present gave appropriate understanding and consideration to the Foster family."[1154] Livingstone said he then left the Fosters and went to the White House.[1155] On July 21, Livingstone assigned Kelli McClure, an Office of Management Administration employee, to type a report of his activities on July 20-21.[1156] Livingstone said he created the document to assist press personnel in compiling a chronology of activities during the aftermath of Foster's death.[1157] That report was consistent with Livingstone's statement that he

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[1152] White House gate records (July 21, 1993) (Doc. No. 211-DC-00001076).

[1153] Livingstone 5/16/95 GJ at 46-48; see also Livingstone's typewritten chronology of events (July 21, 1993) (Doc. No. 033-DC-00001773).

[1154] Livingstone 5/12/94 Fiske Int. at 4. Livingstone initially said there were a "few press types" at the Fosters' house that morning, id., but subsequently was unsure. Livingstone 5/16/95 GJ at 47.

[1155] Livingstone 5/16/95 GJ at 48-49. David Leavy of the White House press office remembered Livingstone calling him from the Fosters' that morning. Leavy 8/3/94 Fiske Int. at 2. Webb Hubbell remembered a conversation that someone should go to the Foster house in the morning for press control. Hubbell 7/18/94 Fiske Int. at 2. Bruce Lindsey vaguely remembered Livingstone mentioning on July 21 that he was at the Fosters' house that morning. Lindsey 6/22/94 Fiske Int. at 3.

[1156] See Livingstone's typewritten chronology of events (July 21, 1993) (Doc. Nos. 033-DC-00001772 through 1773); see also McClure 7/13/94 Fiske Int. at 1. An FBI review of computer backup records confirmed the document in question was created on the computer system of Tracy Beckett, a White House Office of Administration and Management employee, on July 21. Federal Bureau of Investigation, Laboratory Report, FBI File No. 40713042 D ZC at 2-3 (July 19, 1994). McClure remembered typing the document that day using Beckett's computer. McClure 7/13/94 Int. at 1.

[1157] Livingstone 5/17/98 GJ at 7-8. The report was found in the files of various White House press personnel, including Director of Communications Mark Gearan. Gearan 7/11/94

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went to the Fosters that morning: "I drove by the house at 6:30 a.m. and stayed until 8:00 a.m. There was no press activity."[1158]

Livingstone denied removing or carrying documents from the Counsel's suite, or transporting any documents that were in Foster's office on the morning of July 21.[1159] Livingstone said that soon after he arrived at the White House, he went to the Counsel's suite,[1160] and later at 11:00 a.m. he attended a meeting with the Park Police.[1161] He said he did not remember carrying a briefcase or moving any documents that morning, and was certain he did not carry any documents from the Counsel's suite or Foster's office.[1162]

Fiske Int. at 1.

[1158] Livingstone's typewritten chronology of events (July 21, 1993) (Doc. No. 033-DC-00001773).

[1159] Livingstone 5/16/95 GJ at 62-63; Livingstone 5/17/95 GJ at 4-5.

[1160] Livingstone 5/12/94 Fiske Int. at 4; see Gorham 4/19 & 26/94 Fiske Int. at 9 ("Bill Kennedy and Craig Livingstone dropped by. . . . [Livingstone] looked emotionally upset").

[1161] Livingstone's typewritten chronology of events (July 21, 1993) (Doc. No. 033-DC-00001773); Livingstone 5/17/95 GJ at 7.

[1162] Livingstone 5/17/95 GJ at 4-5; see Livingstone 5/16/95 GJ at 64. Charles Easley, Security Officer for the Executive Office of the President, said Livingstone asked him in 1994 whether he had ever told him that he had removed documents from Foster's office. Easley 4/11/95 GJ at 26, 35; Easley 8/6/94 Int. at 2. When Easley said no, Livingstone commented that he believed he had told him that and that someone from the Secret Service or the Park Police reported Livingstone for taking a box out of Foster's office. Easley 4/11/95 GJ at 26, 35; Easley 8/6/94 Int. at 2-3. In his grand jury testimony, Easley doubted Livingstone had really removed anything from Foster's office, explaining that he thought Livingstone was a braggart who wanted people to think he was important. Easley 4/11/95 GJ at 35.

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C. The Procedure for Searching Foster's Office.

The morning of July 21, two high-level Park Police officials, Chief Robert Langston and Major Robert Hines, told the White House about the findings of the Park Police on Foster's death and its investigative needs. The briefing occurred in David Watkins's office in the White House's West Wing around 11:00 a.m.[1163] In addition to Chief Langston and Major Hines, Nussbaum, Kennedy, Livingstone, Stephanopoulos, Watkins, Burton, Hubbell, Donald Flynn (USSS), Arnie Cole (USSS) and Jim Hamilton, an attorney representing the Foster family, were there.[1164] The Park Police said the death appeared to be a suicide.[1165] The Park Police also said they would need access to Foster's office.[1166] Nussbaum said the Attorney General should coordinate it.[1167]

After the meeting, Nussbaum contacted Phil Heymann, then Deputy Attorney General, to ask DOJ to coordinate the investigations.[1168] Two DOJ attorneys -- David Margolis and Roger

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[1163] Livingstone's chronology showed the meeting at 11:00 a.m. Livingstone's typewritten chronology of events (July 21, 1993) (Doc. No. 033-DC-00001773). Hines and Langston were scheduled to arrive at 10:35 a.m. White House WAVES records (Doc. No. 336-DC-00000431); White House WAVES records (Doc. No. 336-DC-00000505).

[1164] See Livingstone's typewritten chronology of events (July 21, 1993) (Doc. No. 033-DC-00001773); Hamilton 10/23/95 Int. at 4. Burton did not remember if he attended the meeting but Langston and Hines named him as an attendee. Burton 3/22/95 GJ at 71; Langston & Hines 5/17/94 Fiske Int. at 2.

[1165] Langston & Hines 5/17/94 Fiske Int. at 2.

[1166] Id.

[1167] Id.; Nussbaum 6/13/95 GJ at 170-71. Jim Hamilton's notes of the meeting said "[A]ttorney [G]eneral -- access to Vince's office" and "Bernie to call Phil Heymann." See Hamilton 10/23/95 Int. at 5.

[1168] Heymann 6/13/95 GJ at 6; Nussbaum 6/13/95 GJ at 171.

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Adams -- went to the White House that afternoon to meet with Nussbaum.[1169]

Meanwhile, two investigators from the Park Police, Captain Hume and Detective Markland, took over the investigation from Officers Rolla and Braun.[1170] Unaware that Langston and Hines had gone to the White House, Hume and Markland arrived at the White House the morning of July 21 to interview White House employees and to review or take possession of documents from Foster's office.[1171] They arrived some time before 11:20 a.m. and waited in a Secret Service office.[1172] They were told later by Nussbaum that he would meet with them after the DOJ attorneys arrived.[1173] At some point, Hume contacted the FBI,[1174] and Agents Condon, Danna and Salter met Hume and Markland at the White House and also waited for the DOJ attorneys.[1175]

1. White House Meeting on July 21.

In the afternoon on July 21, after the DOJ attorneys had arrived at the White House, a meeting was held to discuss, among other things, the procedure to be used for reviewing

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[1169] A Secret Service record shows they arrived at 4:40 p.m. A chronology of events created by Special Agent in Charge Flynn (July 21-22, 1993) (Doc. No. 211-DC-00000150).

[1170] Hume 5/23/95 GJ at 4-5.

[1171] Id. at 7-8.

[1172] See id. at 7. Hume said he asked Markland to mark down the time after they arrived. Markland noted the time as 11:20 a.m. Markland's handwritten notes (July 21, 1993) (Doc. No. 105-DC-00000341).

[1173] Hume 5/23/95 GJ at 12; Nussbaum 6/13/95 GJ at 175.

[1174] Hume 5/23/95 GJ at 12.

[1175] Condon 4/20/94 Fiske Int. at 1; Danna 4/25/94 Fiske Int. at 1; Salter 4/19/94 Fiske Int. at 1.

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documents in Foster's office.[1176] Participants say the meeting was attended by at least Nussbaum, Neuwirth and Sloan from the White House Counsel's Office; Margolis and Adams from the Justice Department; Danna, Condon and Salter from the FBI; Hume and Markland from the Park Police (although Hume mentioned that he waited in the hall and did not hear the entirety of the meeting); and Flynn from the Secret Service.[1177] The investigators (Condon and Salter, Hume and Markland) were present at a second afternoon meeting with Nussbaum about White House employee interviews.[1178]

Nussbaum remembered the investigators said they wanted to go into Foster's office to look for a suicide note, an extortion note, or other evidence of why he committed suicide.[1179] Nussbaum said he expressed concern about the sensitive nature of the materials kept in Foster's office, and the possibility of executive privilege.[1180] Nussbaum said he told the investigators he would try to accommodate their legitimate interests.[1181]

Nussbaum said he remembered at that point "there were no agreements as to how we

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[1176] See Chronology of events created by Special Agent in Charge Flynn (July 21-22, 1993) (Doc. No. 211-DC-00000150).

[1177] Nussbaum 6/13/95 GJ at 175; Neuwirth 2/28/95 GJ at 99; Sloan 4/4/95 GJ at 58; Margolis 6/14/95 GJ at 8; Adams 5/9/95 GJ at 6; Danna 4/25/94 Fiske Int. at 1; Condon 4/20/94 Fiske Int. at 1; Salter 5/16/95 GJ at 5; Hume 5/23/95 GJ at 16-18; Markland 5/23/95 GJ at 5-6; Flynn 5/23/95 GJ at 10.

[1178] See Detective Peter Markland, U.S. Park Police Report at 1 (Aug. 5, 1993).

[1179] Nussbaum 6/13/95 GJ at 176.

[1180] Id. at 177-78.

[1181] Id. at 178.

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would do it, because we [were] still sort of evolving as to how we would do this."[1182] Nussbaum acknowledged there was discussion of a procedure where investigators would view the first page of each file in Foster's office.[1183] Nussbaum said he did not agree: "I said to them I would consider it. It was a serious option. I had to think about it. I said I would consider it and seriously consider it, but I never agreed to it."[1184] Nussbaum said "[w]e left it, basically, for the next day."[1185]

Neuwirth supported Nussbaum: "I don't think any agreement was reached, because I know that the next day there were continuing discussions about what would be the appropriate procedure to use."[1186] Neuwirth said the first page review process "may have been suggested, but that was certainly never agreed to at any time I was present."[1187]

Margolis and Adams contradicted Nussbaum and Neuwirth. They maintained that Nussbaum agreed on July 21 to allow investigators to review at least a portion of each

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[1182] Id. at 179.

[1183] Id. at 178; Senate Whitewater Comm. Hearing, supra note 408, at 40 (Aug. 9, 1995) (testimony of B. Nussbaum).

[1184] Senate Whitewater Comm. Hearing, supra note 408, at 40 (Aug. 9, 1995) (testimony of B. Nussbaum).

[1185] Nussbaum 6/13/95 GJ at 179-80.

[1186] Neuwirth 2/28/95 GJ at 104.

[1187] Neuwirth 2/28/95 GJ at 103. Sloan said he did not remember either that an agreement was reached on the search procedure at the meeting on July 21 or that the issue was left explicitly for resolution the following day. Sloan 4/4/95 GJ at 61. Sloan remembered the ultimate decision on July 22 about the procedure to be used, but says he is "hazy on the preliminaries before that resolution." Id. at 62.

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document.[1188] Margolis said when he was dispatched to the White House, Heymann told him that "he had reached a tentative agreement with Mr. Nussbaum that [Adams and Margolis] were to go through at least the first page or two of each document to determine whether they were relevant to our investigation."[1189] Margolis said Heymann told him that "he believed he'd had an agreement in principle with Bernie Nussbaum to do it that way, so I should go finalize it and then begin the search process."[1190] Margolis said investigators planned to look for "either a suicide note or something that could be characterized as a suicide note, or some other bright-line item which would indicate a reason for Mr. Foster to take his life, such as an extortion letter or anything like that, or anything else that jumped out at us that would indicate a reason for taking his life -- that we would go through at least the first page or two of each item and make a call as to relevancy."[1191]

Margolis testified in the Senate that he had "discussed it with Mr. Nussbaum. And I believed then, and I believe today that we finalized that agreement, and that we both agreed to it."[1192] Margolis said he was confident because Neuwirth had tried to restate the agreement as permitting Nussbaum to review the documents and provide only those that were relevant and non-privileged.[1193] Margolis objected to this and Nussbaum agreed that Neuwirth had incorrectly

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[1188] Margolis 6/14/95 GJ at 11; Adams 5/9/95 GJ at 12-13.

[1189] Senate Whitewater Comm. Hearing, supra note 408, at 161 (Aug. 10, 1995) (testimony of D. Margolis).

[1190] Id. at 179 (testimony of D. Margolis).

[1191] Id.

[1192] Id.

[1193] Id.

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stated the agreement.[1194] Margolis gave similar testimony before the grand jury on June 14, 1995.[1195]

Adams's testimony was consistent with Margolis's. Adams said "the agreement was that Mr. Margolis and I would examine each file as it was pulled out of wherever they were in Mr. Foster's office -- file drawer, desk, credenza, anything like that -- for the purpose of determining privilege and determining if they should be seen by the Park Police and the FBI or not."[1196] Adams said the review was to be "very, very summary."[1197] Before the Senate Whitewater Committee, he said investigators would review only the title page and possibly the first page of every document.[1198] In his own notes about the meeting, which were written after the Foster note was discovered on July 26, Adams wrote that "the Justice Department attorneys would look at each document or at least each file to determine if it contained privileged material, in which case it would not be examined by the Park Police or the FBI."[1199] He testified "it was our understanding this would be a joint review."[1200] Adams, like Margolis, remembered Neuwirth's

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[1194] Id.

[1195] Margolis 6/14/95 GJ at 11.

[1196] Adams 5/9/95 GJ at 11-12.

[1197] Senate Whitewater Comm. Hearing, supra note 408, at 95 (Jul. 27, 1995) (testimony of R. Adams).

[1198] Id. at 95-96 (testimony of R. Adams).

[1199] R. Adam's typewritten notes re: the July 22, 1993 search of Foster's office (prepared after July 28, 1993) (Doc. No. 070-DC-00000132).

[1200] Senate Whitewater Comm. Hearing, supra note 408, at 96 (Jul. 27, 1995) (testimony of R. Adams).

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unsuccessful attempt to summarize the understanding.[1201]

Heymann said he was "very foggy" about his conversation with Nussbaum on July 21.[1202] He remembered "having a very clear impression . . . that each document in turn would be held up so that -- with the hand over most of the content with the headings there, so that they could see what the content was about, and if it had nothing -- if it apparently had nothing at all to do with Vince Foster's death then they could say, 'We have no interest in that document.'"[1203] Supervisory FBI Special Agent John Danna said "[t]he procedure agreed to was that Margolis and Adams would review the documents in Foster's office with Nussbaum."[1204] Danna prepared a teletype on July 22, with a final version dated July 23, for the FBI Director about the meeting confirming this agreement.[1205]

But FBI Special Agent Salter said after the July 21 meeting, he did not expect the Justice

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[1201] Id. at 95.

[1202] Heymann 6/13/95 GJ at 7.

[1203] Id. at 7-8.

[1204] Danna 4/25/94 Fiske Int. at 1.

[1205] The teletype said:

> An initial meeting was held with White House Counsel Bernard Nussbaum at which time it was agreed the victim's office, which is located adjacent to Mr. Nussbaum's, would continue to be sealed by the U.S. Secret Service (USSS) until 10:00 a.m. on 7/22/93, at which time Margolis and Adams would conduct a preliminary examination of documents located within the office. The purpose of this examination is to identify and segregate any privileged documents between the President and the White House Counsel's office. Subsequent, to this examination, the USPP and WMFO investigative team will review all pertinent documents in an effort to gather evidence in this matter.

J. Danna, FBI Teletype to WMFO re: Unsub, Vincent W. Foster Jr., Deputy White House Counsel to the President -- Victim; 175B-WF-187743-1, at 2-3 (July 23, 1993) (emphasis added).

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Department lawyers to review the documents in Foster's office.[1206] When asked about the lawyers' role, Salter said: "[M]y impression was that they would not have a role in actually conducting the review of the items in the office."[1207] When he learned of Adams's testimony about an agreement with Nussbaum, Salter said, "I wasn't aware of the role that had been agreed on for the Department of Justice lawyers."[1208]

2. Morning Meeting on July 22: Department of Justice Attorneys Object to Method of Search.

Adams and Margolis arrived at the White House at 9:56 a.m. on July 22.[1209] Margolis and Adams said when they met with Nussbaum, he changed the search procedure agreed to on July 21.[1210] Adams said Nussbaum told them he had decided that he alone would look at the documents in Foster's office and determine whether they were privileged.[1211] Adams said he and Margolis immediately protested that this new procedure was not what they had agreed to, and would have to speak with Heymann.[1212] Adams said Nussbaum was "definitely cognizant" there

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[1206] Salter 6/30/95 Senate Whitewater Comm. Depo. at 54. But see Senate Whitewater Comm. Hearing, supra note 408, at 101 (Jul. 27, 1995) (testimony of S. Salter) ("I wasn't familiar with all the details of it, but I believed that the investigators would have access to the documents themselves").

[1207] Salter 6/30/95 Senate Whitewater Comm. Depo. at 54.

[1208] Senate Whitewater Comm. Hearing, supra note 408, at 132 (Jul. 27, 1995) (testimony of S. Salter).

[1209] White House WAVES records (July 22, 1993) (Doc. No. 336-DC-00000165); White House WAVES records (July 22, 1993) (Doc. No. 336-DC-00000542).

[1210] Adams 5/9/95 GJ at 19-20; Margolis 6/14/95 GJ at 16.

[1211] Adams 5/9/95 GJ at 19-20.

[1212] Id. at 20.

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was a change.[1213]

Margolis also said Nussbaum told them there was a change of plans.[1214] Under his new plan, Nussbaum would first look at the materials in Foster's office "because of their sensitivity, executive privilege, attorney/client privilege issues, national security issues, sensitivity issues."[1215] If the materials met Nussbaum's standards, and the investigators wanted to see them, then Nussbaum would let them.[1216]

Margolis said he called Heymann, who told Margolis he firmly opposed the new Nussbaum plan.[1217] Margolis said Heymann then spoke with Nussbaum on the telephone,[1218] and following their conversation Nussbaum said he would think about the arguments and make a final decision.[1219] Margolis and Adams went downstairs to wait.[1220]

Heymann said he received a call from Margolis who explained Nussbaum's plan.[1221] Heymann next spoke to Nussbaum and the conversation became "heated."[1222] Heymann remembered telling Nussbaum "I thought it was very foolish, and, above all, I didn't want two

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[1213] Id. at 20.

[1214] Senate Whitewater Comm. Hearing, supra note 408, at 164 (Aug. 10, 1995) (testimony of D. Margolis).

[1215] Id. at 182-83.

[1216] Id. at 183.

[1217] Id.

[1218] Id.

[1219] Id. at 186.

[1220] Id.

[1221] Heymann 6/13/95 GJ at 13.

[1222] Id. at 13-14.

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Justice Department employees hanging around looking as if they were playing some useful role when if all they were going to do is be sitting in the room."[1223] Heymann said Nussbaum said he would talk to some other people and call back.[1224]

Heymann said he was worried about the "credibility of the institutions of the Department of Justice and the White House . . . ."[1225] He wanted a procedure that respected both "the investigators' need to satisfy themselves that they were getting whatever information they ought to have, and the White House's need for protection of confidentiality of documents."[1226]

Cynthia Monaco, Special Assistant and Counsel to Heymann, recorded her observations of the telephone call between Heymann and Nussbaum in notes.[1227] The notes, which Monaco said were dictated that day or a few days later,[1228] read:

> Phil [Heymann] was on the phone with Bernie Nussbaum and he said: "You are messing this up very badly. I think you are making a terrible mistake." And what I took it to mean, in the context of the general conversation was that Bernie had refused to let David and Roger take a look at the documents.[1229]

Nussbaum said that when he met with Margolis and Adams, he told them about the

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[1223] Id. at 14.

[1224] Heymann 6/13/95 GJ at 14-15; Senate Whitewater Comm. Hearing, supra note 408, at 47 (Aug. 2, 1995) (testimony of P. Heymann).

[1225] Senate Whitewater Comm. Hearing, supra note 408, at 68 (Aug. 2, 1995) (testimony of P. Heymann).

[1226] Id. (testimony of P. Heymann).

[1227] Monaco 7/6/95 Senate Whitewater Comm. Depo. at 70; see Monaco's typewritten notes (dictated after July 22, 1993) (Doc. No. 070-DC-00000149 through 152).

[1228] Monaco 7/6/95 Senate Whitewater Comm. Depo. at 73.

[1229] Monaco's typewritten notes (dictated after July 22, 1993) (Doc. No. 070-DC-00000149).

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procedure he planned to use for the search:

> We'll walk in together, and I will go through the files. You'll all come in with me. You will see what I'm looking at. I will describe to you what I'm looking at. I will describe to you what I'm looking at in some general terms, but I will do the looking. I may show you the first page of something or the title of something, but we'll see as it goes along and obviously if I find a suicide note or extortion note, I'll give it to you.[1230]

Nussbaum said Margolis and Adams "weren't happy."[1231] He testified to "a vague recollection" that somebody mentioned the procedure in which investigators would review the first page of each document,[1232] but said he did not remember a telephone conversation with Heymann that morning.[1233] He maintained there was no agreement to a particular procedure on July 21, and that he did not break an agreement on the morning of July 22.[1234]

D. Events between the Meeting on July 21 and the Search on July 22.

The forgoing events raised questions about why Nussbaum limited investigators' access to the documents. The Independent Counsel examined two principal areas: 1) telephone conversations before the search between Nussbaum, Hillary Clinton, Susan Thomases, and Margaret Williams; and 2) conversations the morning of July 22 between Nussbaum, McLarty,

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[1230] Nussbaum 7/12/95 Senate Whitewater Comm. Depo. at 170-71.

[1231] Id. at 171.

[1232] Id.

[1233] Id. at 173-74.

[1234] See Nussbaum 5/26/94 Fiske GJ at 42-43 (Nussbaum said he came up with what he thought to be a "fair and balanced procedure" which was "made explicit" during discussions with the Park Police and Margolis); Nussbaum 6/13/95 GJ at 180; Senate Whitewater Comm. Hearing, supra note 408, at 113 (Aug. 9, 1995) (testimony of B. Nussbaum); Nussbaum 7/12/95 Senate Whitewater Comm. Depo. at 117; Nussbaum 7/13/95 Senate Whitewater Comm. Depo. at 462-63; Nussbaum 6/8/95 Int. at 12; Nussbaum 7/8/94 Fiske Int. at 2-3.

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Jack Quinn (then Chief of Staff to the Vice President), Burton, Lindsey, and Neuwirth.

1. Telephone Conversations before the July 22 Morning Meeting of Nussbaum, Margolis, and Adams.

Records show the following pertinent telephone calls and events between 5:00 p.m. July 21 and 10:00 a.m. on July 22:[1235]

July 21

TIME	ACTIVITY
5:00 p.m. (approx.)	Meeting among Nussbaum, Neuwirth, Sloan, Margolis, Adams, and perhaps others
7:45 p.m.	Twelve-minute call made from Dorothy Rodham's residence in Little Rock to Bruce Lindsey's office[1236]

[1235] Analyses of telephone conversations have been aided by telephone records, which were produced to the Independent Counsel (and the Senate) during the investigation. Home telephone records for Williams's residence in Washington, D.C. and Dorothy Rodham's residence in Arkansas were produced in late 1994. White House pager records were produced to the Independent Counsel in June 1995. Thomases produced phone records in July 1995 and December 1995. All of the records were not available, however, when some witnesses were questioned at earlier stages of the investigation. Some witnesses were recalled by the Senate and/or the grand jury to answer questions about phone tolls produced at later stages. See Certified Records of Regularly Conducted Business Activity form from Bell Atlantic to Law Enforcement Liaison Unit to the Independent Counsel's Office re: production of M. Williams's phone records (Dec. 16, 1994) (Doc. No. 055-DC-00000001); Fax Transmission from Southwestern Bell to Brett M. Kavanaugh, Associate Independent Counsel re: production of Dorothy Rodham's phone records (Nov. 11, 1994) (065-DC-00000001); Production letter from Miriam R. Nemetz, Associate Counsel to the President, to Mark H. Tuohey III, Deputy Independent Counsel, re: production of White House phone records (May 3, 1995) (210-DC-00002252 through 53); Production letter from Miriam R. Nemetz, Associate Counsel to the President, to Brett M. Kavanaugh, Associate Independent Counsel, re: production of White House pager records (Aug. 25, 1995) (210-DC-00005139 through 40); Letter from Benito Romano, Susan Thomases's attorney, to Brett M. Kavanaugh, Associate Independent Counsel, re: production of Thomases's phone records (Dec. 22, 1995) (387-DC-00000001).

[1236] Dorothy Rodham's phone records (bill dated Aug. 3, 1993) (Doc. No. 065-DC-00000010).

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TIME	ACTIVITY
9:11 p.m.	Thomases exits White House compound (entry at 2:51 p.m.)[1237]
9:23 p.m.	Two-minute call from Thomases's cellular phone to Maggie Williams's home residence[1238]
11:00 p.m.	One-minute call charged to Thomases's calling card from Thomases's hotel in Washington to Dorothy Rodham's residence[1239]

July 22

TIME	ACTIVITIES
7:43 a.m.	Nussbaum arrives at White House compound[1240]
7:44 a.m.	Seven-minute call from Maggie Williams's residence to Dorothy Rodham's residence[1241]
7:57 a.m.	Three-minute call from Dorothy Rodham's residence to Thomases's hotel in Washington, D.C.[1242]
8:01 a.m.	Page for Nussbaum: "PLS CALL SUSAN THOMAS[E]S AT 202 659-8787"[1243]
8:25 a.m.	Four-minute call, charged to Thomases's calling card, from Thomases's hotel in Washington, D.C. to Dorothy Rodham's residence[1244]

[1237] White House gate records (July 21, 1993) (Doc. No. 211-DC-00000926); White House gate records (July 21, 1993) (Doc. No. 211-DC-00000984).

[1238] Thomases's cellular phone records (bill dated Aug. 20, 1993) (Doc. No. 387-DC-00000160).

[1239] Thomases's calling card records (bill dated Aug. 25, 1993) (Doc. No. 387-DC-00000151).

[1240] White House gate records (July 22, 1993) (Doc. No. 211-DC-00000908).

[1241] M. Williams's phone records (bill dated Aug. 29, 1993) (Doc. No. 055-DC-00000008).

[1242] Dorothy Rodham's phone records (bill dated Aug. 3, 1993) (Doc. No. 065-DC-00000010).

[1243] Nussbaum's White House pager records (July 22, 1993) (Doc. No. 210-DC-00002648).

[1244] Thomases's calling card records (bill dated Aug. 25, 1993) (Doc. No. 387-DC-

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TIME	ACTIVITIES
9:00 a.m.	Message for Maggie Williams at White House from Thomases: "call when you get in the office"[1245]

This sequence of telephone calls led to an inquiry into whether Williams, Hillary Clinton and Thomases tried to persuade Nussbaum to keep investigators from viewing materials in Foster's office, and, if so, why.

a. July 21: Evening Discussions.

Thomases was in the White House the afternoon of July 21 when Margolis and Adams said they reached agreement with Nussbaum to review the materials in Foster's office on July 22. White House records show she entered the compound at 2:51 p.m. and left at 9:11 p.m.[1246]

Thomases said she was at the White House on the afternoon and evening of July 21 to visit with friends about Foster's death.[1247] She talked with the President and "some of the young people" who worked for Mrs. Clinton.[1248] She "assume[d]" that she saw Mack McLarty.[1249] Thomases first testified that she could "not with certainty" say whether she saw Williams on July

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00000151).

[1245] M. Williams's phone message slip (July 22, 1993) (Doc. No. 210-DC-00003437).

[1246] White House gate records (July 21, 1993) (Doc. No. 211-DC-00000984); White House gate records (July 21, 1993) (Doc. No. 211-DC-00000926). Mr. Fiske's office was told by the Secret Service the White House gate records do not necessarily show all entries and exits, so it is possible that Thomases left and reentered the White House between 2:51 p.m. and 9:11 p.m. See Imbordino 6/8/94 Fiske Int. at 1-2.

[1247] Thomases 7/7/95 GJ at 43.

[1248] Thomases 9/9/94 Int. at 40, 43 (sworn testimony).

[1249] Thomases 7/7/95 GJ at 43.

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21;[1250] later she said she did remember seeing Williams that day.[1251]

Thomases remembered a conversation with Williams on July 21 "about emotions, but she did mention in that initial conversation I had with her, as I recollect it, that she had gone into Vince's office and had found -- had seen, not found but seen Patsy Thomasson there, and Patsy was there to look for a note."[1252] Thomases said she did not think she had a private conversation with Nussbaum on July 21,[1253] yet she did not think the search was discussed while she was at the White House on July 21.[1254] She testified the possibility of an investigation "just wasn't on my radar screen" on July 21.[1255]

Thomases said she had "no specific recollection" of speaking with Mrs. Clinton on July 21.[1256] Toll records show a one-minute call to Dorothy Rodham's residence at 11:00 p.m. charged to Thomases's credit card.[1257] Thomases testified, "I have reason to believe that some time late in that day before I went to bed, I tried to reach her. I don't know whether I was successful."[1258] In her Senate deposition, Thomases was asked whether she could be "certain under oath" that she

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[1250] Thomases 9/9/94 Int. at 43 (sworn testimony).

[1251] Thomases 7/7/95 GJ at 42.

[1252] Senate Whitewater Comm. Hearing, supra note 408, at 111 (Aug. 8, 1995) (testimony of S. Thomases).

[1253] Thomases 7/7/95 GJ at 43.

[1254] Id.

[1255] Thomases 9/9/94 Int. at 42 (sworn testimony).

[1256] Thomases 7/17/95 Senate Whitewater Comm. Depo. at 69.

[1257] Thomases's calling card records (bill dated Aug. 25, 1993) (Doc. No. 387-DC-00000151).

[1258] Thomases 7/17/95 Senate Whitewater Comm. Depo. at 69.

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did not discuss concerns with Mrs. Clinton about the examination of Foster's office's contents on July 21.[1259] Thomases answered, "I can't swear unequivocally because I don't have any memory about any -- about the fact that I did have a conversation or what the conversation was about."[1260]

Williams testified that she thought Thomases stopped by her office at the White House July 21.[1261] Williams said, "I don't remember talking to her about the Park Police searching the office as a focus of any conversation that we had."[1262] She said Thomases was worried and sad: "She was like everybody else trying to figure out why he had killed himself."[1263] Williams said she spoke with Mrs. Clinton once on July 21, but not about the search.[1264]

Williams was questioned in the grand jury about the two-minute call from Thomases's cellular phone to Williams's residence at 9:23 p.m. on July 21, twelve minutes after Thomases left the White House.[1265] Williams said she did not remember this phone call from Thomases.[1266]

Thomases also was asked about the call and said she did not remember it.[1267] When asked whether she may have left a message about Foster's office, Thomases thought it was "unlikely" and responded, "I have no memory at this period of time talking to anybody about Mr. Foster's

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[1259] Id. at 101.

[1260] Id.

[1261] M. Williams 6/2/95 GJ at 30-31.

[1262] Id. at 31.

[1263] Id.

[1264] Id. at 30.

[1265] M. Williams 4/23/96 GJ at 14-15.

[1266] Id. at 17.

[1267] Thomases 5/2/96 GJ at 30.

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office, except when I talked to Bernie Nussbaum the next day."[1268]

b. July 22: Telephone Traffic.

The timing and duration of telephone calls on Thursday morning raised a question about whether there was a relationship between the calls and the search. This concern was sharpened by Associate Counsel Stephen Neuwirth's testimony about a phone conversation between Nussbaum and Thomases on July 22.[1269] Neuwirth said Nussbaum told him about the conversation before the search on July 22.[1270] Neuwirth said his "impression" was that Thomases had told Nussbaum that Mrs. Clinton was concerned about the search.[1271]

Neuwirth was questioned about the precise nature of this "impression":

Q. Do you have any recollection of the substance of what Mr. Nussbaum told you?

A. I walked away from what Mr. Nussbaum told me feeling what I say here that I felt. And I can't tell you what's -- I can't tell you that Mr. Nussbaum said to me, "Susan Thomases told me the First Lady is worried about this." What I can tell you is that that was the impression I had, based on whatever it was that Mr. Nussbaum told me.

. . . .

A. . . . I would not have had that impression if it didn't reflect the substance of what I was told. All I was trying to do was make clear that I can't tell you that Bernie said exactly this to me. It was just what I took from the conversation we'd had.

Q. But you infer from the fact you had this impression based solely on what

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[1268] Id. at 31-32.

[1269] Neuwirth 2/28/95 GJ at 97.

[1270] Id.

[1271] Id.

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he told you that that is the substance of what he told you -- is that fair?

A. I mean, it's fair that the substance of what he told me caused me to have this impression. I just can't tell you that he said this specific thing to me.

. . . .

Q. And do you have a specific recollection that he mentioned the First Lady in that conversation?

A. Well, I don't remember exactly what he said. It would surprise me if he hadn't, if I got this impression. But again, I just cannot confirm for you what exact words he used or who he specifically mentioned.

Q. It would surprise you, though, if you had extrapolated, shall we say, to include the First Lady, if he had not mentioned her?

A. That's correct. But again, I can't tell you with certainty that he did.[1272]

Neuwirth offered a slightly different description of the conversation to the Senate Committee in July 1995. Asked what Nussbaum told him about his conversation with Thomases, Neuwirth answered:

> Again, while I don't remember his exact words, in a very brief discussion, my understanding was that Mr. Nussbaum felt that Ms. Thomases and the First Lady may have been concerned about anyone having unfettered access to Mr. Foster's office.[1273]

Neuwirth also said he was "not sure" whether the conversation took place before the search: "I think it may have been but I'm not positive."[1274]

[1272] Neuwirth 4/2/96 GJ at 57-58, 63 (emphasis added).

[1273] Neuwirth 7/10/95 Senate Whitewater Comm. Depo. at 112 (emphasis added).

[1274] Id. at 111.

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i. Bernard Nussbaum.

Nussbaum said Thomases mentioned Foster's office search in a conversation around July 22;[1275] Nussbaum said Thomases told him other people were concerned about the procedure used to search Foster's office.[1276]

Although Nussbaum's testimony did not make clear whether he discussed the search with Thomases before the search, after the search, or both, Thomases said Nussbaum spoke with her about the search before it took place.[1277] Sloan told Mr. Fiske's office he remembered Nussbaum speaking with Thomases about the search on the telephone shortly after the search concluded.[1278]

In the grand jury on June 13, 1995, Nussbaum said:

> A. . . . I remember one conversation with Susan Thomases which took place after the search. But there may have been two. If she remembers two, there could have been two. But they were both the same, didn't make any difference if there was one or two.
>
> The comment -- she would say to me, "What are you doing, and why are you doing it?" The same kind of thing [Bill] Burton would say to me. And I would say, "This is what I'm doing, and this is why I'm doing it, and I'm going to do it." And so -- and she would just say, "Okay, I'm just -- I'm just asking, because I know there is some discussion going on in the White House as to what you are doing, and why you are doing it, and how you are doing it."
> . . . .
>
> I had two such conversations -- I had one such conversation, I remember, with Susan Thomases. It could have been two. I recall it being afterward

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[1275] Nussbaum 7/12/95 Senate Whitewater Comm. Depo. at 139.

[1276] Id. at 142.

[1277] Thomases 7/17/95 Senate Whitewater Comm. Depo. at 71-72.

[1278] Sloan 7/7/94 Fiske Int. at 2.

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which I said this to her, that it has been done in this fashion, this is the reason we did it. But it was possible I had one before and one after.

Q. She didn't say that she had talked to the First Lady and -

A. No, she just said she understood there were conversations going on in the White House with respect to some people just wanted to know what I was doing, and what I wasn't doing. Something like that. She said people, or something like that.

I didn't ask her whether she talked to the First Lady, she didn't tell me she talked with the First Lady. . . .[1279]

Nussbaum testified in his Senate deposition that although he remembered having the conversation with Thomases before the search, it could have been after.[1280] Shown a record showing he was paged to call Susan Thomases at 8:01 a.m. on July 22, Nussbaum concluded he spoke with her before the search, but said he could not remember the conversation.[1281]

He also said Thomases told him that people were concerned about the procedure and the invasion of people's privacy;[1282] yet, she did not specifically identify the First Lady as one of those who was concerned.[1283] Nussbaum said, "No, it wasn't my impression that she was referring to the President or the First Lady specifically. It wouldn't surprise me. I mean, Susan talks to a lot of people."[1284]

Sloan told Mr. Fiske's office that he remembered a telephone conversation between

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[1279] Nussbaum 6/13/95 GJ at 194-95 (emphasis added).

[1280] Nussbaum 7/12/95 Senate Whitewater Comm. Depo. at 139.

[1281] Id. at 155-56.

[1282] Id. at 142-43.

[1283] Id. at 141-42.

[1284] Id. at 144.

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Nussbaum and Thomases after the search was done.[1285] Sloan said while he and Nussbaum were in Foster's office, Nussbaum "was on the telephone with SUSAN THOMASES and relating the procedure that had been followed during the search of the FOSTER's office."[1286]

In a Senate deposition, Neuwirth testified that he understood from Nussbaum that "Ms. Thomases and the First Lady may have been concerned about anyone having unfettered access to Mr. Foster's office."[1287] When asked if he made this comment to Neuwirth, Nussbaum testified,

> I don't have any memory of Susan Thomases mentioning the First Lady to me in this conversation. I do remember her saying what I said, that people were concerned. Now, is it possible that I extrapolated after that conversation and said something to Neuwirth along those lines? I guess it's possible that I did that. I'm not saying if Neuwirth has testified or says that, I have no memory of that.[1288]

Nussbaum said he assumed the First Lady's view would be "that permitting unfettered access to a lawyer's office is not proper. That was my assumption. It was not the result of any conversation with her."[1289] He did not discuss the First Lady's view with Thomases.[1290]

ii. Susan Thomases.

In her first appearance before the grand jury, Thomases was shown the records of her 7:57 a.m. call from Dorothy Rodham's residence in Little Rock, Arkansas to Thomases's hotel in

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[1285] Sloan 7/7/94 Int. at 2.

[1286] Id.

[1287] Neuwirth 7/10/95 Senate Whitewater Comm. Depo. at 112.

[1288] Nussbaum 7/12/95 Senate Whitewater Comm. Depo. at 146.

[1289] Senate Whitewater Comm. Hearing, supra note 408, at 17 (Aug. 9, 1995) (testimony of B. Nussbaum).

[1290] Id.

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Washington, D.C., and then the 8:01 a.m. page from Thomases to Nussbaum.[1291] She testified, "I don't remember having a conversation with the First Lady about any documents . . . [o]r the search of the office."[1292] Thomases claimed she did not remember the 7:57 a.m. call, but assumed that she reported to Mrs. Clinton on the President's and Williams's states of mind.[1293]

Thomases said she had "no recollection" of paging Nussbaum, but added, "I don't know that I didn't."[1294] When asked whether she conveyed to Nussbaum a concern by Mrs. Clinton that investigators not have unfettered access to Foster's office, Thomases testified, "I don't remember having that conversation. I don't remember her articulating that concern, and I don't remember having that conversation with Bernie."[1295]

In a deposition conducted by the Senate Whitewater Committee, Thomases again said, "I have no recollection of talking to Mrs. Clinton about the contents of Vince Foster's office."[1296] Testifying before the Senate Whitewater Committee hearing on August 8, 1995, Thomases said she firmly believed that she had no such conversation with Mrs. Clinton: "I'm absolutely firm that had she discussed documents with me at this time, I would have noticed it."[1297]

Thomases consistently testified that she had a conversation with Nussbaum on July 22 in

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[1291] Thomases 7/7/95 GJ at 45. Record of the 8:25 a.m. call from Thomases's guesthouse to Dorothy Rodham's residence had not yet been produced.

[1292] Id. at 45 (emphasis added).

[1293] Id.

[1294] Id.

[1295] Id. (emphasis added).

[1296] Thomases 7/17/95 Senate Whitewater Comm. Depo. at 83.

[1297] Senate Whitewater Comm. Hearing, supra note 408, at 180 (Aug. 8, 1995) (testimony

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which Nussbaum described the procedure he was going to use for the review of Foster's office.[1298] Thomases said Nussbaum, not she, raised the topic.[1299] She said Nussbaum called her and said there was an investigation and the investigators wanted to go through the documents in Foster's office.[1300] Nussbaum implied that he was not going to let the investigators see the documents.[1301] Thomases said this conversation took place before the meeting with the Justice Department, the Park Police, and the FBI about the office's search.[1302]

Thomases gave similar testimony in a Senate deposition.[1303] Thomases told Nussbaum it sounded like he had thought through the search carefully, and she wished him luck because she knew it would be emotionally difficult.[1304]

Thomases again testified about the Nussbaum conversation before the Senate Whitewater Committee on August 8, 1995. She said she had wanted to speak with him to find out how he was doing, but Nussbaum was focused on the documents in Foster's office and raised the

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of S. Thomases) (emphasis added).

[1298] Thomases 7/7/95 GJ at 43-44; Thomases 5/2/96 GJ at 43; Thomases 9/9/94 Int. at 54 (sworn testimony); Thomases 7/17/95 Senate Whitewater Comm. Depo. at 71-72; Senate Whitewater Comm. Hearing, supra note 408, at 62-64 (Aug. 8, 1995) (testimony of S. Thomases).

[1299] Thomases 5/2/96 GJ at 43-44. She first mentioned this conversation in a sworn interview with this Office on September 9, 1994. See Thomases 9/9/94 Int. at 55 (sworn testimony).

[1300] Thomases 9/9/94 Int. at 55 (sworn testimony).

[1301] Id. at 56.

[1302] Id.

[1303] Thomases 7/17/95 Senate Whitewater Comm. Depo. at 71.

[1304] Id. at 78.

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subject.[1305] He said he was going to give Foster's personal documents to his wife's lawyer, the Clintons' documents to their lawyer, protect the Presidential papers and redistribute the work on White House matters.[1306] Thomases told him it "made sense" to her, and did not express any view that there should be limits placed on what the law enforcement people were allowed to see.[1307]

In light of Nussbaum's admission that Thomases told him that "people [were] concerned" about the procedure he planned to use for the search,[1308] Thomases was asked in her Senate deposition about her conversations with people other than Nussbaum about the search.[1309] She said she did not remember discussing the procedure to review the documents in Foster's office with anyone before discussing it with Nussbaum.[1310] She also did not remember expressing any concerns over the search, nor anyone else expressing their concerns to her.[1311]

At the time of Thomases's Senate deposition and her first appearance before the Senate Whitewater Committee in August 1995, the Committee did not yet have the records showing the 7:57 a.m. call from Dorothy Rodham's residence to Thomases. In her Senate appearance, Thomases, who by that time had already been asked in the secrecy of grand jury proceedings

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[1305] Senate Whitewater Comm. Hearing, supra note 408, at 64-65 (Aug. 8, 1995) (testimony of S. Thomases).

[1306] Id. at 64-66.

[1307] Id. at 66-67.

[1308] See Nussbaum 7/12/95 Senate Whitewater Comm. Depo. at 142.

[1309] Thomases 7/17/95 Senate Whitewater Comm. Depo. at 95-96.

[1310] Id. at 96.

[1311] Id. at 96-97.

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about the July 22 call at 7:57 a.m.,[1312] said she thought she had spoken to Mrs. Clinton on July 22 earlier than that evening at 7:12 p.m.[1313] (the time of the telephone toll record that the Committee did then have). Thomases believed that she spoke with Mrs. Clinton about whether Thomases would be able to attend the funeral in Arkansas.[1314] Thomases said, "After that call, I really don't think I spoke to her until the following week."[1315]

The Senate Whitewater Committee subsequently received the telephone records showing the 7:44 a.m. call from the Williams's residence to Dorothy Rodham's residence, and the 7:57 a.m. call from Dorothy Rodham's residence to Thomases's in Washington, D.C. The Senate asked about those records, including the 8:01 a.m. page to Nussbaum from Thomases.[1316] Thomases testified there was no relationship between the 7:57 a.m. call from Mrs. Clinton and the subsequent 8:01 a.m. page to Nussbaum,[1317] saying that she wanted to reach her friend, Nussbaum, to see how he was doing. She simply was trying to reach him before she started her busy day at work.[1318]

After the hearing on November 2, 1995, the Senate Whitewater Committee and the

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[1312] See Thomases 7/7/95 GJ at 45.

[1313] Senate Whitewater Comm. Hearing, supra note 408, at 205-06 (Aug. 8, 1995) (testimony of S. Thomases).

[1314] Id. at 206.

[1315] Id.

[1316] Senate Whitewater Comm. Hearing, supra note 408, at 20-21 (Nov. 2, 1995) (testimony of M. Williams); Senate Whitewater Comm. Hearing, supra note 408, at 84-87 (Dec. 18, 1995) (testimony of S. Thomases).

[1317] Senate Whitewater Comm. Hearing, supra note 408, at 57-58 (Dec. 18, 1995) (testimony of S. Thomases).

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Independent Counsel's Office received the telephone record for the four-minute July 22 call at 8:25 a.m. from Thomases's in Washington, D.C. to Dorothy Rodham's residence in Little Rock.[1319] The Committee and the Independent Counsel called Thomases back for additional testimony. Thomases again testified that she did not believe she talked to Mrs. Clinton about the search before it happened: "I do not ever remember discussing the documents with the First Lady." [1320] Thomases said she only remembered one call with Mrs. Clinton on that day, and did not even know whether she spoke with Mrs. Clinton during the 7:57 a.m. call.[1321]

Thomases was questioned once again about the 7:57 a.m. call in a subsequent grand jury appearance in May 1996. Although she did not dispute the phone records, Thomases said she was not sure she even received the 7:57 a.m. call from Dorothy Rodham's residence.[1322] Thomases said she only remembered speaking with Mrs. Clinton once on July 22.[1323]

iii. Maggie Williams.

Maggie Williams testified that she did not speak with Mrs. Clinton about the search before July 22.[1324] In a sworn interview with this Office on October 28, 1994, Williams said it could be possible that the conversation may have happened, though she did not remember any

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[1318] Id. at 58.

[1319] Thomases's calling card records (bill dated Aug. 25, 1993) (Doc. No. 387-DC-00000151).

[1320] Senate Whitewater Comm. Hearing, supra note 408, at 45 (Dec. 18, 1995) (testimony of S. Thomases).

[1321] Id. at 84-87.

[1322] Thomases 5/2/96 GJ at 38-39.

[1323] Id. at 38.

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conversation with Mrs. Clinton about the search.[1325] To her it seemed that everyone was discussing it.[1326]

In later testimony before the grand jury on June 2, 1995, Williams said definitively that Mrs. Clinton did not communicate her views on the search and no one had asked her to find out Mrs. Clinton's view.[1327]

In a Senate deposition on July 7, 1995, Williams again allowed for the possibility that she discussed the search with Mrs. Clinton: "I don't remember it coming up. But I don't -- I don't remember it coming up. If it came up, it wouldn't surprise me. But I don't remember it coming up."[1328]

After Williams's July 1995 testimony, the Senate Committee obtained telephone records showing the 7:44 a.m. call from the Williams's residence to Dorothy Rodham's residence on July 22. Williams said although she remembered making the call, she did not remember who she spoke with or the conversation's substance.[1329]

Williams also was questioned in the grand jury about the phone call to the Rodham residence in Arkansas. She testified she was not sure whether she spoke with Mrs. Clinton, her

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[1324] M. Williams 4/23/96 GJ at 22.

[1325] M. Williams 10/28/94 Int. at 6-7 (sworn testimony).

[1326] Id. at 7.

[1327] M. Williams 6/2/95 GJ at 30.

[1328] M. Williams 7/7/95 Senate Whitewater Comm. Depo. at 73.

[1329] Senate Whitewater Comm. Hearing, supra note 408, at 19-22 (Nov. 2, 1995) (testimony of M. Williams).

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mother, Mrs. Rodham, or Capricia Marshall.[1330] Williams said, "The first time that I recall talking to Mrs. Clinton about anything having to do with documents in Vince Foster's office, as I have testified, was on Thursday [July 22] -- sometime Thursday afternoon. Before that, documents were just not on my mind, quite frankly."[1331]

iv. Hillary Rodham Clinton.

Mrs. Clinton testified that she did not remember discussing the search with Thomases or Williams the morning of July 22. Mr. Fiske first addressed the subject without the aid of telephone records:

> Q. Did you ever express any concern to anyone about the Park Police having direct access to documents in Mr. Foster's office?
>
> A. You know, I don't remember what I expressed concern about, but I'm sure I expressed a lot of concerns to a lot of people about what was to me an overwhelmingly awful experience. And I don't remember what I said about anything. But I don't remember saying anything about the Park Police to anybody that I remember now.
>
> Q. But the specific question was whether you ever expressed any concern about the Park Police seeing the documents that were in Mr. Foster's office.
>
> A. Not that I remember, no.[1332]

On July 22, 1995, Mrs. Clinton was questioned about records showing the 7:44 a.m. call from Williams's home to Dorothy Rodham's residence, the 7:57 a.m. call from Dorothy Rodham's residence to Thomases's in Washington, D.C., and the 8:01 a.m. page from Thomases

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[1330] M. Williams 4/23/96 GJ at 19-20.

[1331] Id. at 22.

[1332] H. Clinton 6/12/94 Fiske Depo. at 21-22 (emphasis added).

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to Nussbaum. Mrs. Clinton said she did not remember a conversation with Maggie Williams or Susan Thomases on July 22, and specifically did not remember any discussions about documents in Foster's office.[1333]

On January 26, 1996, Mrs. Clinton appeared before the grand jury and was told about the toll record for the 8:25 a.m. call from Thomases to Dorothy Rodham's residence.[1334] Unlike her previous testimony, Mrs. Clinton said she did remember talking to Thomases and Williams about funeral arrangements and whether she should return to Washington to "see people personally," about their grief over Foster's death, how President Clinton was doing, and whether she "should call people or just wait until [she] saw them personally."[1335] She said she did not remember discussing the search.[1336]

2. More Discussions at the White House.

Nussbaum said on the morning of July 22, he discussed the search with Sloan, Neuwirth, Burton, McLarty, Quinn and Lindsey.[1337] Some witnesses testified about a meeting in the late morning or mid-afternoon, between Nussbaum, Burton, Quinn, Neuwirth and Lindsey.[1338] Nussbaum said Burton, in particular, questioned the procedure.[1339] Nussbaum also said Quinn

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[1333] H. Clinton 7/22/95 Depo. at 26-28.

[1334] H. Clinton 1/26/96 GJ at 88.

[1335] Id. at 89-90.

[1336] Id. at 91.

[1337] Nussbaum 5/13/94 Fiske Int. at 10.

[1338] See Neuwirth 2/28/95 GJ at 110-11 (was unsure whether the meeting occurred on July 21 or 22); Nussbaum 5/26/94 Fiske GJ at 62-65; Quinn 3/28/95 GJ at 32.

[1339] Nussbaum 6/13/95 GJ at 188.

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"thought it was a mistake for me to let any law enforcement people go into Foster's office."[1340] Nussbaum said that he would make the decision, and "I told them we're going to do it my way."[1341]

Neuwirth, Burton, McLarty, Quinn and Lindsey all said they were involved in some discussions about the search.[1342] McLarty said he did not remember having discussions with Nussbaum about the procedure for searching Foster's office.[1343] McLarty said he confirmed with Nussbaum on July 21 or July 22 that Nussbaum was responsible for the matter,[1344] and said he had no concern about Nussbaum's ability to handle the situation.[1345] McLarty said he did not remember talking to Quinn about the search until McLarty's attorney reminded him during preparation for a grand jury appearance.[1346]

Burton testified in a Senate deposition that the morning of July 22, he discussed the procedure for searching Foster's office with Nussbaum. Burton said "[t]he discussion was about how the search would be conducted and how the White House would assert and protect the various privileges that might be unveiled by the process."[1347] Burton said "at some point during

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[1340] Nussbaum 7/12/95 Senate Whitewater Comm. Depo. at 180.

[1341] Id. at 184.

[1342] See Neuwirth 2/28/95 GJ at 89-91; Burton 3/22/95 GJ at 74-76; McLarty 4/25/95 GJ at 57-58; Quinn 3/28/95 GJ at 32; Lindsey 6/22/94 Fiske Int. at 3.

[1343] McLarty 4/25/95 GJ at 58.

[1344] Id.

[1345] Id. at 59.

[1346] Id. at 58.

[1347] Burton 7/5/95 Senate Whitewater Comm. Depo. at 81.

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the morning," he had a conversation with McLarty, and "Jack Quinn of the Vice President's staff was also brought in at some point to offer his input."[1348] Burton said he was "fairly confident" that Neuwirth and Sloan also were involved in discussions about the search.[1349] Asked when these discussions took place, Burton said "morning, approaching the noon hour and possibly going into the early afternoon."[1350]

Burton said he did not think McLarty said how the search should be conducted.[1351] He said Lindsey "tended to be for a more conservative approach," and that Quinn, who "was kind of brought in late in the discussion . . . favored a more conservative approach as well."[1352] Burton said he did not remember Mrs. Clinton being involved in those discussions.[1353]

A 9:45 a.m. telephone message slip from McLarty to Burton on July 22 said "talk to him re[:] Jack Quinn (they met)."[1354] Quinn said that sometime July 21 or 22, McLarty told him Nussbaum was handling the search.[1355] Quinn said McLarty was "eager to have a second opinion as to whether or not this was being handled properly, and that he would appreciate it if I would find out what Bernie was doing and give Bernie my advice as to how it ought to be done."[1356]

[1348] Id. at 82.

[1349] Id. at 82-83.

[1350] Id. at 83.

[1351] Burton 3/22/95 GJ at 77-78.

[1352] Id. at 78.

[1353] Id.

[1354] Burton phone message slips (July 22, 1993) (Doc. No. 442F-DC-00000661).

[1355] Quinn 3/28/95 GJ at 27.

[1356] Id.

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Quinn said he firmly opposed Nussbaum's plan to permit law enforcement officers into Foster's office because many materials were privileged or classified.[1357] He proposed that a White House employee with the proper security clearance who he thought shared the attorney/client privilege with the President, review the materials to make sure that privileged matters, as well as national security matters, were segregated before the investigators "come in and conduct the search."[1358]

Maggie Williams told Mr. Fiske's office she may have attended a meeting where a conversation took place between McLarty and Nussbaum about the search.[1359] Williams later said "I don't remember a specific conversation, but I have a feeling that either I was standing around in the conversation or sitting around in a conversation about it, but I remember executive privilege as being part of that discussion."[1360]

In a July 1994 interview, Nussbaum "speculated that perhaps BILL BURTON had spoken with [Mrs. Clinton]."[1361] But Nussbaum testified in the grand jury that he could not remember anyone expressing concern during the morning discussions that any documents subject to review could embarrass the President or the First Lady.[1362] Nussbaum said he could not determine whether others had spoken with the President or the First Lady about Foster's office: "I mean, is

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[1357] Id. at 35-36.

[1358] Id. at 39, 41-42.

[1359] M. Williams 5/25/94 Fiske Int. at 5.

[1360] M. Williams 10/28/94 Int. at 5 (sworn testimony).

[1361] Nussbaum 7/8/94 Fiske Int. at 5.

[1362] Nussbaum 5/26/94 Fiske GJ at 64.

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it possible that there were discussions with the President or the First Lady? Yes, it is possible, but it wouldn't surprise me if it was. But no directions or orders were given to me to do anything other than I -- than what I determined to do."[1363]

3. Susan Thomases's Multiple Phone Calls to the White House on July 22.

Telephone records show that the morning of July 22, when Nussbaum was discussing the search with others at the White House, six calls were placed from Thomases's or her secretary's phone to the White House; three to the Chief of Staff's office, and three to the First Lady's office.[1364] Thomases said none of these calls were about the documents in Foster's office.[1365] She said she called the Chief of Staff's office to reach McLarty, but was unsuccessful.[1366] "I was reaching out for Mack and I was anxious to speak to him because he had a very special relationship with Vince, and I wanted to talk to him. And unfortunately I do not believe that I was able, nor can I remember, that I was able to reach him that day."[1367] Thomases said she had "no idea" that Nussbaum was meeting with others in McLarty's office about the search, so "I did not call to interrupt or reach anybody in a meeting that I didn't know even existed."[1368]

[1363] Id. at 64-65.

[1364] Willkie, Farr & Gallagher phone records (July 20, 1993 – Aug. 19, 1993) (Doc. Nos. 303-DC-00000004 & 11).

[1365] Senate Whitewater Comm. Hearing, supra note 408, at 61-62 (Nov. 2, 1995) (testimony of S. Thomases).

[1366] Senate Whitewater Comm. Hearing, supra note 408, at 201 (Aug. 8, 1995) (testimony of S. Thomases).

[1367] Senate Whitewater Comm. Hearing, supra note 408, at 95 (Nov. 2, 1995) (testimony of S. Thomases).

[1368] Senate Whitewater Comm. Hearing, supra note 408, at 107 (Aug. 8, 1995) (testimony of S. Thomases).

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Thomases could not remember who she was trying to reach at the First Lady's office or who she spoke with during the calls.[1369] She said the telephone number she used was a central number she used to reach a variety of people at the White House, particularly in the First Lady's office.[1370] She said if she were trying to reach Maggie Williams, she usually would call Williams's direct line rather than the general number for the First Lady's office.[1371] Other witnesses said the number Thomases used was a general number for the First Lady's office,[1372] but Thomases said if she were unsuccessful in reaching Williams on her direct line, she would attempt to reach her through the general number for the First Lady's office.[1373]

When pressed about who she spoke with after calling the First Lady's office on July 22, Thomases said she could not remember, as it could have been Williams, Evelyn Lieberman or anyone else who worked for the First Lady.[1374] Thomases did remember speaking with Williams on July 22, but not when.[1375]

Thomases told the grand jury she did not reach McLarty that morning, and could not remember if she spoke with Burton.[1376] She also could not remember who she spoke to when she

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[1369] Senate Whitewater Comm. Hearing, supra note 408, at 90, 98 (Nov. 2, 1995) (testimony of S. Thomases).

[1370] Id. at 128.

[1371] Id. at 90.

[1372] See Cicetti 4/16/96 GJ at 8; M. Williams 4/23/96 GJ at 23.

[1373] Thomases 5/2/96 GJ at 54.

[1374] Senate Whitewater Comm. Hearing, supra note 408, at 102, 108 (Aug. 8, 1995) (testimony of S. Thomases).

[1375] Id. at 104-05.

[1376] Thomases 5/2/96 GJ at 50.

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called the general number for the First Lady's office.[1377] Thomases acknowledged for the first time that she had a brief phone conversation with Williams the morning of July 22 to find out how Williams was doing.[1378]

Maggie Williams testified before the Senate Whitewater Committee that she remembered only one conversation with Thomases on July 22; Thomases stopped by her office and discussed whether Foster's family would receive insurance money.[1379] Williams could not remember speaking with Thomases by phone and did not know if any calls were directed to her, because Thomases usually called her direct line instead of the main number.[1380] Williams rejected any implication that the series of telephone calls from Thomases to the First Lady's office was part of "something sinister."[1381]

Williams was questioned in the grand jury about the calls. Williams did not remember speaking with Thomases by phone the morning of July 22.[1382] She did not know who Thomases spoke to when Thomases called the First Lady's office three times that morning.[1383]

Evelyn Lieberman, who Thomases said she might have called, was asked if she spoke

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[1377] Id. at 52.

[1378] Id. at 57.

[1379] Senate Whitewater Comm. Hearing, supra note 408, at 185 (Jul. 26, 1995) (testimony of M. Williams).

[1380] Id. at 231-33.

[1381] Id. at 233.

[1382] M. Williams 4/23/96 GJ at 29-30.

[1383] Id. at 31.

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with Thomases that morning. She answered, "I don't remember. I wouldn't remember."[1384] Lieberman said she did not remember Thomases calling her in the First Lady's office that day, but said they "could have had phone conversations, and [Thomases] could have had phone conversations with other people in the office."[1385] Lieberman said Thomases had regular contact with several people in the First Lady's office: Williams, Lieberman, Deputy Chief of Staff to the First Lady, Melanne Verveer and Press Secretary to the First Lady, Lisa Caputo.[1386] Patti Solis, the First Lady's scheduler, also claimed regular telephone contact with Thomases.[1387]

E. The Search of Foster's Office.

After his discussions with others at the White House the morning of July 22, Nussbaum began the search. Despite his statement that he would call Heymann with his final decision on the procedure, Nussbaum did not call Heymann back.[1388] The search began at approximately 1:15 p.m.[1389]

Secret Service logs show the following people present: Bernard Nussbaum, Stephen

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[1384] Senate Whitewater Comm. Hearing, supra note 408, at 187 (Jul. 26, 1995) (testimony of E. Lieberman).

[1385] Id. at 251.

[1386] Id. at 252.

[1387] Solis 4/2/96 GJ at 14. Although Solis acknowledged a conversation with Thomases about Foster's death, she did not remember when that conversation took place. Id. at 30-31.

[1388] Heymann 6/13/95 GJ at 15; Senate Whitewater Comm. Hearing, supra note 408, at 48 (Aug. 2, 1995) (testimony of P. Heymann). See Nussbaum 7/12/95 Senate Whitewater Comm. Depo. at 176.

[1389] See Chronology of events created by Special Agent in Charge Flynn (July 21-22, 1993) (Doc. No. 211-DC-00000150); Secret Service handwritten log of persons entering Foster's office (July 21-22, 1993) (Doc. No. 211-DC-00000151); Captain Charles Hume, U.S. Park Police Report entitled "Review of documents from Vincent Foster's Office," at 1 (Aug. 4, 1993).

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Neuwirth, Cliff Sloan, Bill Burton, Michael Spafford, David Margolis, Roger Adams, Charles Hume, Peter Markland, Scott Salter, Dennis Condon, Paul Imbordino and Donald Flynn.[1390] Nussbaum sat behind Foster's desk and reviewed the files.[1391] Neuwirth, Sloan and Burton stood behind Nussbaum while the Foster family attorney Spafford stood at the end of the desk.[1392] The investigators and Justice Department lawyers gathered on the opposite side, seated on the sofa or in chairs brought in by the U.S. Secret Service.[1393]

Hume said Nussbaum's review was conducted in a "very hurried and casual fashion."[1394] Nussbaum made three groups or "piles" of files:[1395] 1) files that investigators said they wanted to see; 2) Foster's personal papers, which Nussbaum intended to turn over to Spafford; and 3) "miscellaneous documents" that Nussbaum put in another pile or left in the file cabinets.[1396] Margolis and Adams remembered a fourth pile: Clinton family documents.[1397]

Margolis agreed with Nussbaum the Foster personal papers should go to Spafford.[1398] He

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[1390] Secret Service handwritten log of persons entering Foster's office (July 21-22, 1993) (Doc. No. 211-DC-00000151).

[1391] Captain Charles Hume, U.S. Park Police Report entitled "Review of documents from Vincent Foster's Office," at 1 (Aug. 4, 1993).

[1392] Id.

[1393] Id. at 2.

[1394] Id.

[1395] See Flynn 4/5/94 Fiske Int. at 3.

[1396] See Nussbaum 5/26/94 Fiske GJ at 47-48, 50; Sloan 4/4/95 GJ at 74-75.

[1397] Margolis 6/14/95 GJ at 27; Margolis 6/8/94 Fiske Int. at 3; Adams 5/9/95 GJ at 27; Senate Whitewater Comm. Hearing, supra note 408, at 176-77 (August 10, 1995) (testimony of D. Margolis).

[1398] Margolis 6/14/95 GJ at 36-37; Senate Whitewater Comm. Hearing, supra note 408, at

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suggested to Nussbaum that he keep the official files and the Clintons' personal files segregated temporarily to answer questions.[1399] Nussbaum replied that he would think about it, but that he probably would not keep custody of the personal files.[1400] The search concluded at approximately 2:49 p.m., when the Secret Service discontinued security on the door to Foster's office.[1401] Flynn left the office keys with Nussbaum.[1402]

Heymann said when he learned how the search was conducted he was "surprised, angry, and felt betrayed."[1403] He called Nussbaum the evening of July 22 and complained.[1404] Heymann said he asked, "Bernie, are you hiding something? Is there some terrible secret here that you're hiding?"[1405] Nussbaum replied, "[N]o, there's nothing like that. I give you my word on that, Phil. There's nothing like that."[1406] Nussbaum said he did remember having a conversation with Heymann on the evening of July 22 after the search was concluded, but did not remember

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175 (August 10, 1995) (testimony of D. Margolis).

[1399] Margolis 6/14/95 GJ at 36; Senate Whitewater Comm. Hearing, supra note 408, at 176-77(August 10, 1995) (testimony of D. Margolis).

[1400] Margolis 6/14/95 GJ at 36; Senate Whitewater Comm. Hearing, supra note 408, at 176-77 (August 10, 1995) (testimony of D. Margolis).

[1401] See Chronology of events created by Special Agent in Charge Flynn (July 21-22, 1993) (Doc. No. 211-DC-00000150); Secret Service handwritten log of persons entering Foster's office (July 21-22, 1993) (Doc. No 211-DC-00000151).

[1402] Flynn 4/5/94 Fiske Int. at 3.

[1403] Heymann 6/13/95 GJ at 16.

[1404] Id. at 16-17; Senate Whitewater Comm. Hearing, supra note 408, at 49-50 (Aug. 2, 1995) (testimony of P. Heymann); Heymann 7/21/95 Senate Whitewater Comm. Depo. at 91-92.

[1405] Heymann 7/21/95 Senate Depo. at 92.

[1406] Id.

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Heymann addressing any change in procedure or being angry with him.[1407] Nussbaum said Heymann called to ask that Foster's office remain intact.[1408]

F. Handling of Foster's Documents after the Search.

1. Overview.

No one created a complete index of documents in Foster's office at the time of the search on July 22.[1409] Sloan and Spafford took handwritten notes, and Markland made a couple of minor notations in his notebook.[1410]

Associate Counsel Cliff Sloan took possession of all documents that investigators said they wanted to review.[1411] The Park Police reviewed those documents on July 30.[1412] Many of Foster's White House work files remained in the office.[1413] Nussbaum took possession of Foster's

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[1407] Nussbaum 6/13/95 GJ at 216-17.

[1408] Id.

[1409] Deborah Gorham, Foster's secretary, said she maintained indices of the contents of the White House Counsel's Office safe, as well as, subject matter files which were kept in the outer office of the Counsel's suite. Gorham 3/17/95 Int. at 7. She also maintained an index (which she did not update as regularly) of some, but not all, of the files in Foster's office. Id. at 6, 8. Gorham also said she kept a duplicate index in the drawers in Foster's office, but she did not re-enter Foster's office from the time of his death until July 26. Id. at 6, 9.

[1410] See Sloan's handwritten notes (July 22, 1993) (Doc. Nos. 033-DC-00001212 through 1241); Spafford's handwritten notes (July 22, 1993) (Doc. Nos. 296-DC-00000014 through 22); Markland handwritten notes (July 22, 1993) (Doc. No. 105-DC-00000265).

[1411] Sloan 4/4/95 GJ at 77; Sloan 5/11/94 Fiske Int. at 12; Nussbaum 5/26/94 Fiske GJ at 53.

[1412] Captain Charles Hume, U.S. Park Police Report entitled "Review of documents from Vincent Foster's Office," at 1 (Aug. 4, 1993).

[1413] Nussbaum 5/26/94 Fiske GJ at 54.

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travel office file after the search.[1414] On Monday, July 26, Steve Neuwirth indexed the files that were in Foster's office.[1415] The Neuwirth index listed files, but not the documents contained within the files.[1416] These files remained in the office until November 1993, when they were indexed, boxed and moved to the Old Executive Office Building by Thomas Castleton.[1417]

Nussbaum and Spafford said that at the conclusion of the July 22 search, a stack of Foster's personal documents was boxed up,[1418] which Spafford took with him when he left that day.[1419] Spafford created an index of those files,[1420] and later received a second box of personal items that were in Foster's office on July 26.[1421]

The stack of Clinton personal documents was taken to the White House residence on July

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[1414] Id. at 58.

[1415] Neuwirth 2/28/95 GJ at 130.

[1416] See Neuwirth's index of documents in Foster's office (July 26, 1993) (Doc. Nos. 033-DC-00000013 through 18).

[1417] Castleton 4/4/95 GJ at 68-69.

[1418] Nussbaum 6/13/95 GJ at 202-03; Spafford 6/28/95 GJ at 25; Spafford 5/24/94 Fiske Int. at 3. On July 27, 1993, Spafford returned to Nussbaum a file entitled "Clinton Memos" along with a cover letter that said the file was "placed inadvertently in a box of personal items that I removed from Mr. Foster's office at your request last week." Letter from Michael L. Spafford, the Foster family's attorney, to Bernard W. Nussbaum, White House Counsel (July 27, 1993) (Doc. No. AK-DC-00000002).

[1419] Spafford 6/28/95 GJ at 24; Spafford 7/11/95 Senate Whitewater Comm. Depo. at 105; Spafford 5/24/94 Fiske Int. at 3.

[1420] See Spafford's index of documents taken from Foster's office (July 22, 1993) (Nos. 296-DC-00000007 through 13).

[1421] Spafford 6/28/95 GJ at 25; Spafford 5/24/94 Fiske Int. at 3; Letter from Bernard W. Nussbaum, White House Counsel, to Jim Hamilton, the Foster family's attorney (July 26, 1993) (Doc. No. 210-DC-00002618).

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22 and then to Williams & Connolly on July 27.[1422] Williams & Connolly prepared an index of those documents.[1423] Bob Barnett said the index was complete, and after the documents came to Williams & Connolly, no documents were destroyed, removed, or returned to the White House before or after the completion of the index.[1424]

In short, three indices of Foster's office files were prepared shortly after his death. These indices did not show all files that were in Foster's office when he died. Moreover, the Neuwirth index did not list each document; it merely listed files.[1425]

2. Collecting the Clintons' Personal Documents.

The White House Counsel's failure to catalogue, preserve, or copy Foster's documents, combined with how the documents were distributed after the July 22 search, made it impossible to establish what documents were or were not in Foster's office during the July 22 search, or

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[1422] M. Williams 10/28/94 Int. at 14-15, 20, 22 (sworn testimony); see Senate Whitewater Comm. Hearing, supra note 408, at 11 (Dec. 12, 1995) (testimony of R. Barnett).

[1423] Williams & Connolly index of the Clintons' personal files taken from Foster's office (prepared after July 27, 1993) (Doc. Nos. 325-DC-00000022 through 55). One of the files that was in the box was entitled "Whitewater Development." Excerpt from Williams & Connolly index (prepared the week after July 27, 1993) (Doc. No. 325-DC-00000028). No other files that were in the box referred or related to Madison Guaranty Savings & Loan. See Williams & Connolly index of the Clintons' personal files taken from Foster's office (prepared the week after July 27, 1993) (Doc. Nos. 325-DC-00000022 through 55).

[1424] Kendall & Barnett 5/6/94 Fiske Int. at 2; Senate Whitewater Comm. Hearing, supra note 408, at 50 (Dec. 11, 1995) (testimony of R. Barnett); Barnett 5/2/96 GJ at 50-51.

[1425] See Neuwirth's index of documents in Foster's office (July 26, 1993) (Doc. Nos. 033-DC-00000013 through 18); Spafford's index of documents taken from Foster's office (July 22, 1993) (Doc. Nos. 296-DC-00000007 through 13); Williams & Connolly index of the Clintons' documents taken from Foster's office (week after July 27, 1993) (Doc. Nos. 325-DC-00000022 through 55).

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when the office was sealed on July 21 -- much less when Foster died on July 20.[1426] That uncertainty raised questions about how the documents were handled in the hours and days following the search. The most serious questions concerned the handling of the Clintons' personal documents that were stored in the White House residence for five days before they were taken to Williams & Connolly.

After the conclusion of the search on July 22, Maggie Williams came to Foster's office to collect what she and Nussbaum identified as the Clintons' personal files.[1427] With Special Assistant to the White House Counsel Thomas Castleton's help, Williams brought these files to the third floor of the residence and put them in an office closet used by Mrs. Clinton.[1428]

The search concluded around 2:49 p.m. on July 22.[1429] One entry in Sloan's notes from the search said "get Maggie -- go thru office -- get HRC, WJC stuff."[1430] At 3:05 p.m., Williams

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[1426] As the office was not sealed on the night of July 20 and people entered the office that night, it was impossible even as of July 21 to create a definitive index of documents that were in Foster's office when he died.

[1427] M. Williams 6/2/95 GJ at 31-34; M. Williams 7/7/95 Senate Whitewater Comm. Depo. at 91-92; Senate Whitewater Comm. Hearing supra note 408, at 300-02 (Jul. 26, 1995) (testimony of M. Williams).

[1428] M. Williams 6/2/95 GJ at 34-37; Williams 7/7/95 Senate Whitewater Comm. Depo. at 103; Senate Whitewater Comm. Hearing, supra note 408, at 305-06 (Jul. 26, 1995) (testimony of M. Williams); Castleton 4/4/95 GJ at 56; Castleton 6/27/95 Senate Whitewater Comm. Depo. at 122; Senate Whitewater Comm. Hearing, supra note 408, at 7-13 (Aug. 3, 1995) (testimony of T. Castleton); Gorham 6/2/95 GJ at 30-31; Tripp 6/24/95 GJ at 26 (Tripp mentioned that she could not be sure that Castleton was carrying documents).

[1429] Special Agent in Charge Flynn's typewritten notes (July 21-22, 1993) (Doc. No. 211-DC-00000150); Secret Service handwritten log of persons entering Foster's office (July 21-22, 1993) (Doc. No. 211-DC-00000151).

[1430] Sloan's handwritten notes (July 22, 1993) (Doc. No. 033-DC-00001239). Sloan said he had no personal knowledge whether Williams was contacted or whether documents were

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received a telephone message from Burton asking her to "please call" the telephone number of the Chief of Staff's office.[1431] At 3:08 p.m., there was a ten-minute call from Thomases's cellular telephone to the central number for the First Lady's Office.[1432] At 3:25 p.m., Williams received a message from Neuwirth asking her to call him at an extension in the Counsel's suite.[1433]

Williams agreed she received a call from Nussbaum around 3:00 or 4:00 p.m. about transferring the Clintons' personal files in Foster's office to their personal attorney, Bob Barnett.[1434] She also said after Nussbaum called her at the OEOB, but before she went to the

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retrieved from the office. Senate Whitewater Comm. Hearing, supra note 408, at 84-85 (Aug. 3, 1995) (testimony of C. Sloan). However, in Sloan's Senate deposition, he said he learned in August 1993, that documents from Foster's office were sent to Williams & Connolly. Further, he learned in December 1993 that Williams was involved in taking documents from Foster's office. Sloan 7/7/95 Senate Whitewater Comm. Depo. at 204-05. The testimony is unclear about how he learned of these events, although he mentioned that it was possible that Williams was the source of this information. Id. at 210.

[1431] M. Williams's phone message slip (July 22, 1993) (Doc. No. 210-DC-00003428). Burton, who was present at the search, said he did not remember why he called Williams. Senate Whitewater Comm. Hearing, supra note 408, at 76 (Dec. 13, 1995) (testimony of W. Burton). Williams, on the other hand, said she did not remember receiving a message from Burton. Senate Whitewater Comm. Hearing, supra note 408, at 165-66 (Jul. 26, 1995) (testimony of M. Williams).

[1432] Thomases's cellular phone records (bill dated Aug. 20, 1993) (Doc. No. 387-DC-00000160). Williams testified in the grand jury that she did not remember talking to Thomases then. M. Williams 4/23/96 GJ at 33. Thomases testified in the grand jury that she did not know whom she called in the First Lady's office at 3:08 p.m. on July 22. Thomases 5/2/96 GJ at 56.

[1433] M. Williams's phone message slip (July 22, 1993) (Doc. No. 210-DC-00003427). Williams could not remember talking to Neuwirth that afternoon in her testimony. M. Williams 7/7/95 Senate Whitewater Comm. Depo. at 111. Neuwirth did not have a memory of calling Williams that afternoon, but said Williams was "one of the people I spoke to a lot." Neuwirth 7/10/95 Senate Whitewater Comm. Depo. at 159. When asked whether it was possible that he called Williams that afternoon about documents in Foster's office, Neuwirth said, "I really don't think so." Neuwirth 7/10/95 Senate Whitewater Comm. Depo. at 159.

[1434] M. Williams 10/28/94 Int. at 9-10 (sworn testimony).

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West Wing to collect the Clintons' personal files, she called Barnett and told him that she would have some files for Williams & Connolly to pick up.[1435] Williams thought Barnett must have already known the files would be coming, because he did not question her about them.[1436] Shortly thereafter, Williams went to the White House to meet with Nussbaum to collect the Clintons' personal files.[1437] When she entered the Counsel's office, she saw that "files were stacked up everywhere."[1438] Nussbaum told her to "look around and see if there was anything that he might have missed."[1439] Williams specifically remembered adding one file dealing with President Clinton's taxes to Nussbaum's collection of the Clintons' personal files.[1440]

Nussbaum testified in the grand jury that he contacted Williams because he wanted her to take the records to the residence so the Clintons would have them.[1441] He further testified that he told Williams to check with the Clintons to see what they wanted to do with them, although Nussbaum said he was "99 percent sure" the Clintons would want the files to go to Barnett.[1442]

Telephone records show a ten-minute call at 5:13 p.m. on July 22 from Thomases's law office in New York to the central number at the First Lady's office.[1443] Thomases testified in the

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[1435] M. Williams 6/2/95 GJ at 32.

[1436] M. Williams 10/28/94 Int. at 22 (sworn testimony).

[1437] M. Williams 6/2/95 GJ at 32-33.

[1438] Id. at 33.

[1439] Id.

[1440] Id. at 33-34.

[1441] Nussbaum 5/26/94 Fiske GJ at 55-56.

[1442] Nussbaum 7/12/95 Senate Whitewater Comm. Depo. at 259-60.

[1443] Willkie, Farr & Gallagher phone records (July 21-22, 1993) (Doc. No. 387-DC-

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grand jury that she thought she spoke to Williams during this call about Williams's emotional status and whether she would be able to attend the funeral.[1444] Thomases said they did not discuss the review of documents in Foster's office or the gathering of the Clintons' personal documents with Nussbaum that afternoon.[1445] Although Williams did not remember this phone call, she did remember that she was working on the plane manifest for seating arrangements and needed to know whether Thomases was going to attend the funeral.[1446]

3. The Clintons' Personal Files Go to the Residence.

Williams said after the Clintons' personal files were identified, they were put in a box,[1447] but she could not remember where the box came from or who put the files in the box.[1448] Williams said she called Barnett at Williams & Connolly after Nussbaum notified her about the documents.[1449] After gathering the documents in Foster's office she decided not to send the files to Williams & Connolly on July 22. Williams said it was getting late, so she spoke with either Barnett or his secretary, Sylvia Faison, and told them she would contact them later to pick up the documents.[1450]

Barnett said he learned from Williams, sometime between Foster's death on July 20 and

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[1444] Thomases 5/2/96 GJ at 56, 59.

[1445] Id. at 60.

[1446] M. Williams 4/23/96 GJ at 36-37.

[1447] M. Williams 10/28/94 Int. at 20 (sworn testimony).

[1448] Id.

[1449] M. Williams 6/2/95 GJ at 32.

[1450] M. Williams 10/28/94 Int. at 21 (sworn testimony).

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July 27, that he needed to take possession of files and assume some legal responsibility for the President and Mrs. Clinton.[1451] Barnett produced to the Independent Counsel his telephone logs for July 19 through 30, 1993.[1452] Barnett described his logs as his system of keeping track of phone calls, and that it was his practice, although not "flawless," to record each incoming and outgoing call he receives or makes.[1453] Barnett's telephone logs showed no telephone calls to or from Williams on Thursday, July 22 -- the date Williams said she called Barnett's office twice about the Clintons' personal documents from Foster's office.[1454] Notes taken by an attorney at the White House Counsel's office of an interview with Barnett in the summer of 1994 state "no incoming messages > [after] 3:30 on 7/22."[1455]

Barnett was questioned about the absence of any record of a contact with Williams on July 22. His explanation for not having a record of the call, if one was made, was that he could not say that he wrote down every phone call he received, or that it was possible that he saw

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[1451] Barnett 5/2/96 GJ at 6.

[1452] Barnett's phone logs (July 19-30, 1993) (Doc. Nos. 325-DC-00000150 through 161).

[1453] Barnett 5/2/96 GJ at 7-8.

[1454] Barnett's telephone logs showed that he had two contacts with Williams on July 21 (the day before the search). Barnett's phone logs (July 21, 1993) (Doc. Nos. 325-DC-00000150, 151, 153). In addition, Williams's message slips showed that Barnett tried to reach her by telephone at 8:18 a.m. and 9:05 a.m. on July 21. M. Williams's phone message slips (July 21, 1993) (Doc. Nos. 210-DC-00003451, 3450). According to a report of an interview, Barnett told the Independent Counsel that on July 21 he had general conversations with Williams about the death of Foster and about Barnett assuming the Clintons' personal legal work. Barnett 12/14/95 Int. at 5. Williams testified that on July 21, she did not speak to Barnett about documents in Foster's office. M. Williams 7/7/95 Senate Whitewater Comm. Depo. at 80-81.

[1455] White House Counsel handwritten notes (Summer, 1994) (Doc. No. 543-DC-00000229).

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Williams in person.[1456] In light of Williams's testimony that she may have talked to Barnett's secretary, Sylvia Faison, about the documents from Foster's office, Faison was questioned about that possibility. Faison was "positive" that she did not have a conversation with Williams after Foster's death about picking up documents from the White House.[1457]

Williams said after she talked to Barnett's office for the second time on July 22, "I had pretty much decided I was going to take them over to the residence. So then I thought I should call Hillary and find out where she would like them put in the residence."[1458] Williams said because the files were personal and Nussbaum was moving the files out of Foster's office, she thought they should go to the residence.[1459] Williams contacted Mrs. Clinton to find out where to put them in the residence.[1460] Williams said Mrs. Clinton told her, "I think Carolyn has a closet up on the third floor that you could use to store them. You should call Carolyn."[1461] Mrs. Clinton testified that she directed Williams to talk to Carolyn Huber.[1462]

Williams said she then called Carolyn Huber, and Huber said Williams should put the documents on the third floor of the residence in a closet where she "stored stuff."[1463] Williams

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[1456] Barnett 5/2/96 GJ at 21-22.

[1457] Faison 5/2/96 GJ at 5.

[1458] M. Williams 10/28/94 Int. at 22 (sworn testimony).

[1459] Id. at 22-23.

[1460] Id. at 25.

[1461] Id.

[1462] H. Clinton 7/22/95 Depo. at 24.

[1463] M. Williams 10/28/94 Int. at 26 (sworn testimony).

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arranged to meet Huber and gain entry to the closet.[1464] Huber said Williams contacted her between 4:00 and 6:00 p.m. on July 22[1465] and said Williams told her that Mrs. Clinton had asked her to call and arrange for a box to be stored in a closet on the third floor of the residence.[1466] Huber also said she asked Williams to call her when she was ready to move the box, and she agreed to meet Williams at the elevator that goes directly to the White House residence.[1467]

Williams testified that after she spoke with Huber, she arranged for a Counsel's office intern, Thomas Castleton, to carry the box with the Clintons' personal documents to the residence.[1468] White House logs show they entered the residence at 7:25 p.m. and remained until 7:32 p.m.[1469] Williams said she and Castleton met Huber on the residence's ground floor "[a]nd we went up on the elevator to the third floor. Either I had the key or Carolyn came and undid the -- unlocked the door [to the closet]."[1470] Williams said the box was put in the closet, which she then locked.[1471] Williams said Huber gave her the key: "I know that I had the key and I remember I used to have a plastic key chain that I would keep on my wrist, and I remember

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[1464] Id. at 26-27. Subsequent testimony shows this closet is located in White House residence Room 323, which was the same office used by Huber and Mrs. Clinton to store the Clinton family personal documents. See Senate Whitewater Comm. Hearing, supra note 408, at 16 (Aug. 3, 1995) (testimony of C. Huber); H. Clinton 1/26/96 GJ at 93.

[1465] Senate Whitewater Comm. Hearing, supra note 408, at 14 (Aug. 3, 1995) (testimony of C. Huber).

[1466] Id. at 14-15.

[1467] Id. at 16.

[1468] M. Williams 10/28/94 Int. at 29 (sworn testimony).

[1469] Secret Service residential movement logs (July 22, 1993) (Doc. No. 336-DC-00000849).

[1470] M. Williams 10/28/94 Int. at 31 (sworn testimony).

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putting that key on my key chain."[1472]

Huber said she retrieved the key to the closet from a desk drawer where it was stored.[1473] When the three arrived on the third floor, Huber said the "banker's box" was put in the closet with similar boxes already in the closet.[1474] Contrary to Williams's testimony, Huber did not say that Williams kept the key to the closet: "I locked the door, put the key back in the drawer and we went downstairs."[1475]

Foster's secretary, Deborah Gorham, said she remembered Williams and Nussbaum meeting in Foster's office to collect the Clintons' personal files.[1476] Gorham said Nussbaum and Williams asked her to describe the files in Foster's office that were about the Clintons' personal and financial matters,[1477] but she did not see them packing documents.[1478] Gorham said Williams and Nussbaum later asked for help moving boxes from Foster's office,[1479] and she arranged for Castleton to assist.[1480] She testified that she witnessed Castleton carry out two boxes,

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[1471] Id. at 32-33.

[1472] Id. at 33.

[1473] Senate Whitewater Comm. Hearing, supra note 408, at 16 (Aug. 3, 1995) (testimony of C. Huber).

[1474] Id. at 16-17.

[1475] Id. at 17.

[1476] Gorham 6/2/95 GJ at 30-31. Contrary to all of the other witnesses, Gorham said this happened the week after Foster's death, on about July 28. Id. at 30.

[1477] Id. at 30-31.

[1478] Id. at 31.

[1479] Gorham 6/23/95 Senate Whitewater Comm. Depo. at 140-41.

[1480] Id. at 140.

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accompanied by Williams.[1481]

Castleton testified consistently that he carried a box or boxes of documents to the residence with Maggie Williams on July 22, 1993.[1482] In his most recent testimony, August 8, 1995, Castleton said he did not have a clear memory about who asked him to help carry a box, and he could not remember whether he picked up the box in Williams's office or the First Lady's office.[1483] He said it was "possible" that he picked up the box in Foster's office or the White House counsel's suite, but his best memory was that he picked it up outside the suite.[1484]

Castleton's June 9, 1994 report of interview, contains the following discussion:

> Mr. CASTLETON said that MAGGIE WILLIAMS or someone else told him later that same day that the box contained personal documents belonging to the CLINTON[s] that had been held in VINCENT FOSTER's office. CASTLETON does not know exactly what was in the box nor does he recall MAGGIE WILLIAMS or anyone else advising him as to how, by whom, or when the material in the box was moved from FOSTER's office to HILLARY CLINTON's office. CASTLETON advised that he cannot even be certain who told him that the documents belonged to the CLINTON's and had previously been in FOSTER's office.[1485]

In his September 15, 1994 interview, Castleton remembered that someone told him the Clintons would review the documents that he carried to the residence. He limited the possibility to three people, including Williams:

> One person, whose identity CASTLETON cannot recall, told CASTLETON that

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[1481] Gorham 6/2/95 GJ at 31; Gorham 6/23/95 Senate Whitewater Comm. Depo. at 142.

[1482] Castleton 4/4/95 GJ at 60-65.

[1483] Senate Whitewater Comm. Hearing, supra note 408, at 7, 9-10 (Aug. 3, 1995) (testimony of T. Castleton).

[1484] Id. at 8-9.

[1485] Castleton 6/9/94 Fiske Int. at 2 (emphasis added).

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> the box contained files which involved personal issues pertaining to the CLINTONs. This person did not say to CASTLETON, as has been reported in a Newsweek magazine article, that the files would be reviewed by the CLINTONs' personal attorney. CASTLETON was told by this person that HILLARY RODHAM CLINTON, and possibly President BILL CLINTON, would review the materials and make a determination what had to be done with them. CASTLETON cannot recall the identity of this person, but he is able to eliminate a number of people as having been the person who made this remark to him. The person was not BERNARD NUSSBAUM because he was not present. The person could have been BETSY POND, LINDA TRIPP or possibly MAGGIE WILLIAMS but was probably not DEBORAH GORHAM.[1486]

In testimony before the grand jury, Castleton said "[an] individual or a group of individuals, I believe, told me directly or told me in parts that there were documents in the box or boxes."[1487] He said he was told the documents were stored in Foster's inner office, but "I don't have a specific recollection as to who told me that."[1488] He also said it was his understanding the President and Mrs. Clinton were going to sort through the documents.[1489] This understanding came from the same source that told him he was carrying documents of a personal and financial nature.[1490] Castleton could not remember the source: "I would say that at least in part it was Maggie Williams. As I said before, it could have been a group of -- or a number of individuals that could have been one, two, or three different people who told me either in whole or in part what was contained in these boxes."[1491]

[1486] Castleton 9/15/94 Int. at 6 (emphasis added).

[1487] Castleton 4/4/95 GJ at 58.

[1488] Id. at 60.

[1489] Id. at 63.

[1490] Id.

[1491] Id. at 64-65.

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In his Senate deposition, Castleton said Williams may have been the person who told him about the purpose of taking the documents to the residence.[1492] Castleton said "[s]he said that the President or the First Lady had to review the boxes' contents to determine what was in them."[1493]

Finally, Castleton told the Senate Whitewater Committee on August 3, 1995 that Williams said the box was going to the residence because the contents needed to be reviewed by the First Lady.[1494] Castleton said: "[M]y understanding was that they contained documents of a personal and financial nature that pertained to the First Family and they needed to be reviewed because there was an unfamiliarity with what exactly was in those files."[1495]

Williams said she did not remember telling Castleton the documents were taken to the residence for review by Mrs. Clinton:

> Q. Did you tell him [Castleton] that the President or the First Lady had to review the contents of the boxes to determine what was in them?
>
> . . . .
>
> A. I'm sorry; no, I don't recall. I'm sorry, I do not recall that.
>
> Q. I want to be clear. When you say you don't recall, you mean you don't recall one way or the other?
>
> A. It's -- I don't remember. I don't remember having a conversation with Tom Castleton other than, you know, we're going to the residence. He had to

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[1492] Castleton 6/27/95 Senate Whitewater Comm. Depo. at 139.

[1493] Id.

[1494] Senate Whitewater Comm. Hearing, supra note 408, at 13-14 (Aug. 3, 1995) (testimony of T. Castleton).

[1495] Id. at 25-26.

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know where we were going. That was the amount of that conversation as far as I --

Q. As far as you can remember?

A. Yeah. As far as I can remember.

Q. Did you -- in your conversation with Mrs. Clinton, did Mrs. Clinton indicate to you that she or the President wanted to review the contents of the files?

A. No.

Q. No?

A. The conversation that I had with her was about putting the files some place.

Q. My question, though, to be clear, is did the First Lady tell you that she or the President wanted to personally review the contents of the files?

A. No, she did not.

Q. And that's a definite no. That's not an I don't remember?

A. I don't recall her saying that to me.[1496]

Williams testified before the Senate Whitewater Committee and in a subsequent grand jury appearance that she did not tell Castleton the documents were being taken to the residence so that they could be reviewed by the President or Mrs. Clinton.[1497]

[1496] M. Williams 7/7/95 Senate Whitewater Comm. Depo. at 141-42 (emphasis added).

[1497] Senate Whitewater Comm. Hearing, supra note 408, at 306-07 (Jul. 26, 1995) (testimony of M. Williams); M. Williams 4/23/96 GJ at 44-45.

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4. Conflicting Testimony over Whether One or Two Boxes of Documents Were Taken to the White House Residence.

Testimony differed on whether Castleton carried one or two boxes to the White House residence on July 22. Representatives of Williams & Connolly refer to "the" box they retrieved from the White House on July 27.[1498] Other witnesses said there might have been two boxes.

a. Thomas Castleton.

In his June 9, 1994 interview, Castleton said he carried one box to the residence.[1499] In his September 15, 1994 interview, Castleton also said he carried one box.[1500] In the grand jury on April 4, 1995, Castleton said, "I actually don't even recall if it was just a single box or whether it was two boxes."[1501] In his Senate deposition on June 27, 1995, Castleton said when he walked into the office, he "[p]icked up a box or possibly two boxes. I don't recall exactly how many."[1502] Before the Senate Whitewater Committee on August 3, 1995, Castleton said, "[M]y best recollection is there was one. It may have been two."[1503]

[1498] See Senate Whitewater Comm. Hearing, supra note 408, at 19-20 (Dec. 11, 1995) (testimony of R. Barnett).

[1499] Castleton 6/9/94 Fiske Int. at 1.

[1500] Castleton 9/15/94 Int. at 5.

[1501] Castleton 4/4/95 GJ at 58 (emphasis added).

[1502] Castleton 6/27/95 Senate Whitewater Comm. Depo. at 132 (emphasis added).

[1503] Senate Whitewater Comm. Hearing, supra note 408, at 25 (Aug. 3, 1995) (testimony T. Castleton) (emphasis added).

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b. Bernard Nussbaum.

A report of an interview of Nussbaum dated May 13, 1994 said Nussbaum "boxed" the Clintons' personal files; Castleton helped Williams carry the "items" to the residence portion of the White House; and no other documents were put into "that box" thereafter.[1504]

Before the grand jury on May 26, 1994, Nussbaum described his conversation with Williams about the Clinton personal files, as follows: "It consists of a box, two boxes ultimately . . . ."[1505]

According to a report of interview of Nussbaum on July 8, 1994, Nussbaum told investigators that "[e]ither he himself or he asked CLIFF SLOAN to call MAGGIE WILLIAMS into the office to take files pertaining to the First Family matters. Both WILLIAMS and NUSSBAUM looked at the files and packed them up in a box."[1506]

Before the grand jury on June 13, 1995, Nussbaum testified:

> Maggie and I, we take a couple of files -- it is not huge, it is like two boxes of things, and -- you know -- there is a lot of files in his office -- sent a lot of files, we take those two, we -- I take the files out, we put them in two boxes, and then she calls one of my young kids who works on my staff, like a paralegal type, and basically she instructs him what to do with them. I don't even know what she does with them. She ends up -- I find out later they end up taking them to the residence.[1507]

In a Senate deposition on July 12, 1995, Nussbaum said:

I don't think we looked in very many other places, if we looked in any other place

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[1504] Nussbaum 5/13/94 Fiske Int. at 12-13.

[1505] Nussbaum 5/26/94 Fiske GJ at 56.

[1506] Nussbaum 7/8/94 Fiske Int. at 5 (emphasis added).

[1507] Nussbaum 6/13/95 GJ at 213-14 (emphasis added).

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at all. We looked in the credenza primarily. We identified together files which appeared to be, and which were, Clinton personal files, investments, taxes and the like, and they were put into a box -- I don't remember who put them into the box -- and they were taken out of the office.[1508]

During an appearance before the Senate Whitewater Committee on August 9, 1995, Nussbaum testified:

> I don't recall any particular file that she picked up. I recall her looking to see if there were any additional personal files. I don't remember if she spotted any additional personal files. In any case, this was fairly brief. I don't remember how long it was, but she was there a little while, and then we collected the files that I had pointed out, and they were put in a box, and ultimately taken to the residence.[1509]

On May 7, 1996, Nussbaum was asked about the discrepancies in his testimony, and he said, "It was either one box, obviously, or two boxes. To this day, I don't remember, you know, which it was."[1510]

c. Deborah Gorham.

Gorham said Williams took files from a drawer in Foster's office, and "[i]t was packed up in two boxes with the help of TOM CASTLETON."[1511]

In a later interview, Gorham said she was present in Foster's office with Williams and Nussbaum when they reviewed the Clintons' personal files.[1512] Nussbaum called Gorham into the

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[1508] Nussbaum 7/12/95 Senate Whitewater Comm. Depo. at 238 (emphasis added).

[1509] Senate Whitewater Comm. Hearing, supra note 408, at 145-46 (Aug. 9, 1995) (testimony of B. Nussbaum) (emphasis added).

[1510] Nussbaum 5/7/96 GJ at 22.

[1511] Gorham 4/19 & 26/94 Fiske Int. at 15.

[1512] Gorham 3/17/95 Int. at 2.

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office and said the box or boxes there needed to be taken out.[1513] The report says that "GORHAM does not now recall if there were one or two such boxes."[1514] In her grand jury appearance on June 2, 1995, Gorham said she "saw two boxes being moved" by Castleton.[1515] In a Senate deposition on June 23, 1995, Gorham continued to say there were two boxes removed from Foster's office and carried by Castleton.[1516] During an appearance before the Senate Whitewater Committee on August 1, 1995, Gorham was asked about the movement of a box or boxes from the White House counsel's suite by Castleton, and she again said she remembered seeing two boxes.[1517]

d. Linda Tripp.

Tripp was asked by the Senate Whitewater Committee, on August 1, 1995, what she remembered about Castleton carrying a box or boxes from Foster's office: "My recollection is that the box or boxes were placed in front of Deb Gorham's desk. My next recollection is that Tom Castleton was physically carrying a box out of the suite."[1518] Tripp also told the grand jury that it was her impression the boxes of documents were going to different locations: the

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[1513] Id. at 3.

[1514] Id. (emphasis added).

[1515] Gorham 6/2/95 GJ at 31.

[1516] Gorham 6/23/95 Senate Whitewater Comm. Depo. at 140.

[1517] Senate Whitewater Comm. Hearing, supra note 408, at 136 (Aug. 1, 1995) (testimony of D. Gorham).

[1518] Senate Whitewater Comm. Hearing, supra note 408, at 21 (Aug. 8, 1995) (testimony of L. Tripp).

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Clintons' attorney, the residence, and Foster's attorney.[1519]

5. The Boxes Taken to the Foster Family Attorneys at Swidler & Berlin.

The question of how many boxes there were was complicated by the fact that more than one box of documents was also taken to the offices of Swidler & Berlin, the Foster family attorneys. First, Michael Spafford took a box of documents from Foster's office on July 22.[1520] Spafford said after investigators left Foster's office, he and Sloan put personal documents of Foster's into a box.[1521] Spafford said when he finished that process, he took the box and left the White House.[1522] The following week, more personal items of Foster were sent to Swidler & Berlin in another box.[1523]

6. The Box Seen by the White House Plumbing Foreman.

On February 23, 1996 this Office interviewed Gary Williams, the White House Plumbing Foreman. Williams said that on August 25, 1993, he entered the closet in Room 323, Mrs. Clinton's office.[1524] This was the closet where the box (or boxes) of personal documents from Foster's office went on July 22, 1993. Williams said the closet was locked, and Carolyn Huber

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[1519] Tripp 6/21/95 GJ at 26.

[1520] Spafford 6/28/95 GJ at 24; Spafford 7/11/95 Senate Whitewater Comm. Depo. at 105; Spafford 5/24/94 Fiske Int. at 3.

[1521] Spafford 7/11/95 Senate Whitewater Comm. Depo. at 92.

[1522] Id. at 95.

[1523] Letter from Bernard W. Nussbaum, White House Counsel, to Jim Hamilton, the Foster family's attorney (July 26, 1993) (Doc. No. 210-DC-00002618).

[1524] G. Williams 2/23/96 Int. at 3.

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opened it for him, so that he could work on a shower in Room 324B.[1525] Williams saw two or three boxes with lids in the closet.[1526] He said the boxes were the size and type that hold Xerox paper; they were faded white in color.[1527]

Williams said one of the boxes had the name "VINCENT FOSTER" printed in black magic marker ink approximately two inches high across the lid[1528] and he said the letters "JR" (for "Junior") may also have been written on the lid.[1529] Williams said he moved the boxes out of the closet to do his work.[1530] He said they were not very heavy, and he did not see the contents.[1531] Williams put the boxes back in the closet when he was finished.[1532]

Williams entered the closet again on November 2, 1993.[1533] He said he moved boxes out of the closet again.[1534] Williams thought the boxes were the same ones he had moved out on August 25, 1993.[1535] The report of his interview indicated that Williams said he remembered seeing Foster's name on a lid at least once, and he may have seen it on both occasions.[1536]

[1525] Id.

[1526] Id.

[1527] Id.

[1528] Id.

[1529] Id.

[1530] Id. at 4.

[1531] Id.

[1532] Id.

[1533] Id.

[1534] Id.

[1535] Id.

[1536] Id.

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On May 28, 1996, the White House was served with a grand jury subpoena for any box and/or lid located in the White House residence bearing the name "Foster."[1537] On May 31, 1996, the White House Counsel's Office advised by telephone that a search of the entire residence and of Carolyn Huber's East Wing office had located no responsive materials. Jane Sherburne of the Counsel's Office confirmed that result by letter dated May 31, 1996.[1538]

7. The Return of a White House Renovation File.

This Office investigated whether the documents in the box or boxes taken to the White House residence on July 22 were reviewed by anyone before they were delivered to Williams & Connolly on July 27 and, if so, whether any were removed. As discussed above, Thomas Castleton testified he was told the documents were going to be reviewed by the Clintons or Mrs. Clinton.[1539] Nussbaum initially testified about the return to Foster's office of a file that was removed from the office by Nussbaum and Williams on July 22, though he later retracted his statement.[1540] Nussbaum said this file concerned the White House residence's renovation.[1541] The return of a file would suggest the Clintons' personal files were reviewed by someone after they

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[1537] Grand Jury Subpoena No. D575 (D.D.C. May 23, 1996). The date of service printed on the subpoena is May 23, 1996, but the subpoena was not served until May 28, 1996. See Letter from John D. Bates, Associate Independent Counsel, to Jane Sherburne, Associate White House Counsel (May 28, 1996).

[1538] Letter from Jane Sherburne, Associate White House Counsel, to John D. Bates, Associate Independent Counsel (May 31, 1996).

[1539] Castleton 4/4/95 GJ at 63; Castleton 6/27/95 Senate Whitewater Comm. Depo. at 139; Senate Whitewater Comm. Hearing, supra note 408, at 13 (Aug. 3, 1995) (testimony of T. Castleton).

[1540] Nussbaum 5/26/94 Fiske GJ at 57.

[1541] Id.

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left Foster's office. Mrs. Clinton and Williams have said they did not review the personal files before they were sent to Williams & Connolly and did not remove any such documents.[1542]

a. Nussbaum's Testimony.

In grand jury testimony in May 1994, Nussbaum said Williams returned one of the files originally identified as a Clinton personal file:

> Q. Who selected the files that were Clinton personal files?
>
> A. Maggie and I. I mean, we looked and we selected the files. And one of the files we selected Maggie returned, because it wasn't a personal file. It was really a residence file. It looked like a personal file; it was a file concerning the residence, you know the operation of the White House, which is not a personal file. The operation of the White House residence. But we selected them. But other than that file the other files were personal files.[1543]

In his Senate deposition testimony about the movement of the Clintons' personal files to the residence, Nussbaum again suggested a file on the White House residence was returned to the Counsel's office after it was packed up with the Clintons' personal papers and moved out of Foster's office.[1544] Nussbaum said he was not certain whether the returned file had originated in Foster's office:

> Q. In the files, did you check to see whether commingled in particular files were official documents?
>
> A. We sent over -- we did check to see whether we were sending over personal records as opposed to White House counsel records. And we

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[1542] H. Clinton 1/26/96 GJ at 101; H. Clinton 7/22/95 Depo. at 28; M. Williams 6/2/95 GJ at 38.

[1543] Nussbaum 5/26/94 Fiske GJ at 56-57 (emphasis added).

[1544] Nussbaum 7/13/95 Senate Whitewater Comm. Depo. at 406-07.

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made an effort to send over solely personal records. And actually, one record was sent over and returned.

Q. Which record was that?

A. A record with respect to the residence, a residence file.

Q. Who returned it?

A. I think Ms. Williams returned it.

Q. When did she return it?

A. Sometime thereafter.

Q. When thereafter?

A. Within a matter of days.

Q. Before the documents went to Williams & Connolly?

A. I don't know. I don't remember at this point.

Q. But you're quite sure Ms. Williams returned the document?

A. No, I'm not quite sure Ms. Williams returned the document. I believe Ms. Williams returned the document. A residence file was returned. . . .

Q. Did Ms. Williams tell you who had made the decision to return that document?

A. No.

Q. Did she say anything about how she came to return it?

A. It's just some statement, merely that this concerns the residence. It's not really a private file, although the Clintons live in the residence -

. . . .

A. And consequently the documents should remain in the White House counsel's office.

. . . .

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After conferring with counsel, Nussbaum returned and testified:

A. As I indicated in my testimony, look back at the record, I'm not certain I even had this discussion with Ms. Williams. I'm not positive. It's either Ms. Williams or Mr. Neuwirth I had a discussion with.

I remember a discussion with regard that a residence file, a file concerning the residence should remain in our office rather than be sent over as part of the Clinton personal files to the Clintons and their new personal attorneys. And I had the discussion either with Ms. Williams or with Mr. Neuwirth. It was one of them. That's what I remember.

Q. This conversation occurred after the documents had been taken out on July 22; correct?

A. Yes.

. . . .

Q. Who brought the file back?

A. That I don't remember. Either Ms. Williams or Mr. Neuwirth, even though they're quite distinct, one of them brought the file back.

Q. Where did they bring it back from?

A. I don't know because I wasn't there when the file was brought back, and I'm not sure it was brought back from the residence or from Ms. Williams' office where this file was. It was a residence file, and we made a determination that it was not a personal file that we should send to the Clinton's personal lawyers.

That's all that happened here. We came across a residence file which was returned to Mr. Foster's office for Mr. Neuwirth to work on in the future, just like Mr. Foster had worked on residence matters with Ms. Williams and Mr. Neuwirth.

Q. It was originally a Foster file; right?

A. No, it is a White House residence file on which Mr. Foster worked on.

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Q. Which was in his office?

A. I'm not positive it was in his office. It was either in his office or Ms. Williams's office but it was a matter he worked on.

Q. But it originated in Mr. Foster's office?

A. I'm not 100 percent positive of that. It may have originated in Mr. Foster's office and gone out and was returned or it may have been in Ms. Williams' office and was put into Mr. Foster's office, but it was a residence file.[1545]

When Nussbaum testified before the Senate Whitewater Committee, he said the returned file may not have come from Foster's office: "I am not positive at this point where the file was returned from. It could have been from the residence, or it could have been from Maggie's office, perhaps."[1546] When he was asked in the grand jury on May 7, 1996, why he changed his testimony between his grand jury appearance and his appearance before the Senate Committee, Nussbaum acknowledged that he "clearly was saying" in his 1994 grand jury testimony that one of the files that he and Williams gathered from Mr. Foster's office was sent out and then returned back to Mr. Foster's office.[1547] He was pressed on why he changed his testimony:

Q. Were you aware in May of 1994, when you testified in the Grand Jury, that Mrs. Williams and the Clintons were saying that the files had never been reviewed before they left the White House and went to Williams & Connolly?

A. I don't remember if I knew that in May of 1994.

Q. Did you know that as of July of '95, when you testified at the Senate?

[1545] Nussbaum 7/13/95 Senate Whitewater Comm. Depo. at 406-12 (emphasis added).

[1546] Senate Whitewater Comm. Hearing, supra note 408, at 185 (Aug. 9, 1995) (testimony of B. Nussbaum).

[1547] Nussbaum 5/7/96 GJ at 12.

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A. Oh, yes. Yes, I knew that in July of '95.

Q. Did that fact have an impact on your recollection whether --

A. No.

Q -- the file had been returned?

A. No, it wasn't -- it wasn't that fact that had an impact on my recollection. It was, I think, testimony -- I don't even remember the precise testimony, you know. I think it was testimony by Maggie that we had a discussion about whether or not residence files should stay in the counsel's office or be sent over to the -- to the residence. And we decided that residence files should stay in the counsel's office.

Q. But isn't it still your testimony that the file was returned from somewhere, as opposed to the file never leaving the office?

A. Yes, it's still my testimony that a file was returned from somewhere. But I'm not sure this file was necessarily the file that was in Foster's office.[1548]

b. Williams's Testimony.

Williams remembered discussing with Nussbaum whether a renovation file was an office file or a Clinton personal file, but she said she did not remember returning it to him:

A. I asked about the renovation file. I asked Bernie about it, the house, the private quarters renovation file.

Q. What did you ask him?

A. I said, either, "Is that file in here with the personal ones?" or whatever.

Q. And what did he say?

A. He said, "That belongs to the office, the counsel's office. That's something we're working on." But I thought since it was, you know, in their house,

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[1548] Id. at 12-15 (emphasis added).

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but, you know -- so I was just trying to think of stuff that was happening.

. . . .

Q. Was there a time that you returned a document or documents to the counsel's office or to Bernie Nussbaum, indicating that they didn't belong with the personal papers?

A. I don't remember that, but I wouldn't have done that on my own, I think.

Q. Do you remember somebody telling you to do that?

A. No. I'm just trying to think how I would decide that it wasn't -- shouldn't have been in -- I don't remember returning anything to Bernie. I do remember the discussion about a renovation file.[1549]

In a subsequent Senate deposition, Williams again mentioned a discussion with Nussbaum about renovation files that took place while she and Nussbaum were sorting out the Clintons' personal files in Foster's office.[1550] Williams suggested the renovation file was sorted out from the Clintons' personal papers before they were removed from Foster's office: "I may -- I remember having a discussion with him about the renovation files. And I said should I take the renovation files, and he said no, that has to do with the White House counsel's office. So I remember that was the only discussion, and then I remember either leaving to get a box or leaving because I took a few more calls."[1551]

[1549] M. Williams 10/28/94 Int. at 16-17, 37-38 (sworn testimony) (emphasis added).

[1550] M. Williams 7/7/95 Senate Whitewater Comm. Depo. at 95.

[1551] Id. (emphasis added).

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c. Neuwirth's Testimony.

When Neuwirth was questioned before the grand jury about the renovation file, he said he never told Nussbaum a renovation file was returned to Foster's office after having been somewhere else.[1552] He said sometime after he made an inventory of files in Foster's office on July 26, 1993, he received documents relating to the residence's renovation from either Nussbaum or Williams, or both.[1553] He said he was given a large yellow envelope that contained the documents.[1554] Neuwirth said after a document request from either Mr. Fiske's office or the Independent Counsel in 1994, he gave the yellow envelope and the contents to an attorney with the White House Counsel's Office, probably Neil Eggleston.[1555]

Neuwirth believed the yellow envelope that he received from Williams and/or Nussbaum contained a renovation file folder labeled "Renovation/Oval Office and Executive Residence," and loose papers about the renovation.[1556] He also believed the envelope may have contained a binder labeled "VWF Residence Renovation 1993."[1557] During this Office's investigation, the White House Counsel produced a redwell file folder that contained copies of documents relating

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[1552] Neuwirth 4/2/96 GJ at 17-18.

[1553] Id. at 10-11.

[1554] Id. at 11.

[1555] Id. at 20-21, 25. According to a memo prepared by Neuwirth on May 17,1994, he produced the White House Renovations/Usher File to Neil Eggleston. Memo from Stephen R Neuwirth, Associate White House Counsel, to File re: Subpoena compliance at 1 (May 17, 1994) (Doc. No. F124103).

[1556] Neuwirth 4/2/96 GJ at 11, 30-31.

[1557] Id. at 11, 36.

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to the White House renovation.[1558] The redwell was marked with a note that the materials came from Neuwirth.[1559] The materials included documents from the file and the binder described above.[1560]

A file labeled "Renovation/Oval Office and Exec. Residence" was among those listed on the index prepared by Neuwirth on July 26 of files located in Foster's office on that date.[1561] The index suggested the renovation file was not removed on July 22 and returned after July 26. The evidence allowed for at least two other possibilities: 1) the file remained in Foster's office until Neuwirth created the index; or 2) the file was removed from Foster's office on July 22 and returned before Neuwirth created the index.

The renovation binder, on the other hand, was not listed on Neuwirth's index of July 26.[1562] Neuwirth said because the binder was not listed on the index, he could not be certain whether the binder was in Foster's office on July 26.[1563] The last page of Neuwirth's index contained one entry for the bookcase in Foster's office: "Med Malpractice materials."[1564] There

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[1558] See Letter to Mark H. Tuohey III, Deputy Independent Counsel, from Miriam R. Nemetz, Associate White House Counsel (Aug. 13, 1995) (Doc. No. 210-DC-00003538); White House Renovation binder and file (1993) (Doc. Nos. 210-DC-00003539 through 3899).

[1559] Note attached to White House Renovation binder and file (Doc. No. 210-DC-00003552).

[1560] Neuwirth 4/2/96 GJ at 30-32. See White House Renovation binder and file (1993) (Doc. Nos. 210-DC-00003539 through 3899).

[1561] Excerpt from Neuwirth's index of documents in Foster's office (July 26, 1993) (Doc. No. 033-DC-00000015).

[1562] See id. (Doc. Nos. 033-DC-00000013 through 18).

[1563] Neuwirth 4/2/96 GJ at 36-37.

[1564] Excerpt from Neuwirth's index of documents in Foster's office (July 26, 1993) (Doc.

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were also several books and binders that were identified in Castleton's index as having been in the bookcase in Foster's office but that were not listed on Neuwirth's index.[1565]

Because there was no inventory of materials in Foster's office at the time of the July 22 search by Nussbaum, it was also uncertain whether the binder was in Foster's office on July 22. One entry in Sloan's notes reads "residence renovations."[1566] Sloan said he did not know whether his notes referred to the binder labeled "VWF Residence Renovation 1993."[1567] The Office of the Independent Counsel did not locate any other file folder or binder that corresponded to Sloan's notes. The evidence thus leaves open the possibility the renovation binder was moved from Foster's office to the residence on July 22 and then returned to Foster's office -- perhaps in the yellow envelope -- after July 26.

d. The Yellow Envelope.

After Neuwirth's testimony, the Independent Counsel obtained a photocopy of the yellow envelope from the White House. Jane Sherburne said the Counsel's office discarded the original envelope in March 1995 in assembling material that was in Foster's office when he died for the

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No. 033-DC-00000018).

[1565] Compare id. (Doc. Nos. 033-DC-00000013 through 18), with Castleton's index of documents in Foster's office (May 10, 1994) (Doc. Nos. 033-DC-00000031 through 35). Thomas Castleton prepared an index identifying the location of particular binders and files when Foster's office was finally cleaned out in late 1993. See id. (Doc. Nos. 033-DC-00000031 through 35). According to his index, the bookcase held binders labeled "National Performance Review," "Supreme Court candidates," "Court of Appeals nominations," "District Court Profiles: A-N & O-Z," and others, as well as books entitled "President Clinton's Economic Plan" and "NARA Act Book." See id. (Doc. Nos. 033-DC-00000034 and 35).

[1566] Excerpt from Sloan's handwritten notes (July 22, 1993) (Doc. No. 033-DC-00001235).

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Independent Counsel to review.[1568] In an interview, Miriam Nemetz, Associate White House Counsel, said she did not know that Neuwirth had received the renovation file and binder in the yellow envelope, and therefore she did not realize the envelope had independent evidentiary significance.[1569]

The photocopy of the yellow envelope has two labels. The standard address label is torn off, and neither the addressee nor the sender is legible.[1570] The second label reads as follows:

> UPS SHIPPER NO.
> NY 134-658
> G ID# HC[1571]

Anthony Adkinson, Manager, Loss Prevention Department, United Parcel Service, said UPS shipping number 134-658 was assigned to the National Council of Jewish Women, ("NCJW") an organization located in New York City.[1572]

[1567] Sloan 4/15/96 Int. at 2-3.

[1568] Letter from Jane C. Sherburne, Associate White House Counsel, to Brett M. Kavanaugh, Associate Independent Counsel (Apr. 3, 1996); Nemetz 6/11/96 Int. at 1 (Nemetz said the "we" in Sherburne's letter was actually her).

[1569] Nemetz 6/11/96 Int. at 2. Nemetz said, according to notes prepared by Jane Sherburne and Sheila Cheston of the White House Counsel's Office, Steve Neuwirth told Jane Sherburne and Sheila Cheston in July 1994 that he received these files in the yellow envelope. See id. at 3. Although Nemetz admitted that she had read the notes of Sherburne and Cheston before April 3, 1996, when Sherburne sent her letter, Nemetz said in her interview that she was unaware of the entry in the notes when she discarded the envelope in 1995. Nemetz 6/11/96 Int. at 3, 5.

[1570] Photocopy of yellow envelope, with UPS Shipper No. NY 134-658 G ID# HC, marked "FRAGILE" (Doc. No. AA-DC-00000006).

[1571] Id.

[1572] Memo from Chief Investigator Coy Copeland to Deputy Independent Counsel John Bates (Apr. 4, 1996).

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Maggie Williams was questioned in the grand jury, on April 23, 1996, about her knowledge of the NCJW. She said she probably did some work with the NCJW, but she could not remember off the top of her head.[1573] She said she probably worked with NCJW if they had invited Mrs. Clinton to speak somewhere.[1574]

e. Fingerprint Analysis.

The original renovation files were analyzed for fingerprints by the FBI laboratory. The laboratory examined 366 items and found 334 fingerprints or palm prints. None of the prints matched those of President Clinton, Mrs. Clinton, Margaret Williams, Susan Thomases, Webster Hubbell, or Marc Rolfe (of Williams & Connolly).[1575]

f. The File Returned by Swidler & Berlin.

Regarding a "returned" file -- as distinct from the question of the renovation file's handling -- Barnett said his firm did not return any documents to the White House after his firm received a box of Foster documents.[1576] Swidler & Berlin, the firm representing the Foster family, did return a file to Nussbaum. On July 27, Michael Spafford returned a file to Nussbaum entitled "Clinton Memos" along with a cover letter saying the file was "placed inadvertently in a box of personal items that I removed from Mr. Foster's office at your request last week."[1577]

[1573] M. Williams 4/23/96 GJ at 43.

[1574] Id.

[1575] Federal Bureau of Investigation Laboratory Report at 1-2 (July 15, 1996).

[1576] Barnett 5/2/96 GJ at 50-51.

[1577] Letter from Michael L. Spafford, the Foster family's attorney, to Bernard W. Nussbaum, White House Counsel (July 27, 1993) (Doc. No. AK-DC-00000002).

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G. The Foster Funeral: Discussions of Documents.

The President and the First Lady, along with many White House staff members, attended Foster's funeral in Arkansas on Friday, July 23, 1993. The President flew to Arkansas from Washington on the morning of July 23,[1578] and Mrs. Clinton was already in Little Rock.[1579] Following the funeral, the Clintons flew from Little Rock to Washington late on July 23 and arrived at the White House at 12:11 a.m. on July 24.[1580]

Nussbaum, Williams, Barnett, and Neuwirth also attended the funeral.[1581] Nussbaum said while on Air Force One, he told Barnett that he was transferring some of the Clintons' personal documents from Foster's office.[1582] He said he told Barnett this because he thought the Clintons would be sending them to him and he wanted Barnett to know.[1583]

Williams testified in a sworn interview with the Independent Counsel that she, too, spoke with Barnett on July 23 about the documents that Williams had moved from Foster's office to the residence.[1584] She said she told Barnett she would get the documents to him.[1585] Neuwirth

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[1578] Secret Service Presidential movement logs (July 23, 1993) (Doc. No. 337-DC-00000161).

[1579] Secret Service First Lady's movement logs (July 23, 1993) (Doc. No. 337-DC-00000144).

[1580] Secret Service Presidential movement logs (July 23, 1993) (Doc. No. 337-DC-00000161). The record actually showed a 12:11 p.m. arrival, but from context it is a misprint. Secret Service First Lady's movement logs (July 23, 1993) (Doc. No. 337-DC-00000144).

[1581] See Nussbaum 5/26/94 Fiske GJ at 71; M. Williams 4/23/96 GJ at 48; Barnett 5/2/96 GJ at 24; Neuwirth 2/28/95 GJ at 127.

[1582] Nussbaum 7/12/95 Senate Whitewater Comm. Depo. at 270.

[1583] Id. at 270-71.

[1584] M. Williams 10/28/94 Int. at 34-35 (sworn testimony).

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testified in the grand jury that Barnett approached him and told him he would speak with Maggie Williams over the weekend about documents going to Williams & Connolly.[1586] When asked whether Barnett said he had spoken with anyone about the movement of documents to Williams & Connolly, Neuwirth added, "I think he had said that he had spoken to Maggie Williams."[1587]

When Barnett was asked in the grand jury whether he thought he was told to pick up documents before the funeral trip, Barnett said Neuwirth's testimony that they had a conversation about the documents led him to believe he had such a previous discussion.[1588] But Barnett could not remember it.[1589]

H. The Weekend.

The Clintons were in Washington, D.C. over the weekend of July 24 and 25, 1993. On the morning of Saturday, July 24, the President went to the Oval Office and attended a ceremony in the Rose Garden,[1590] while Mrs. Clinton remained in the residence.[1591] The President returned

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[1585] Id. at 35.

[1586] Neuwirth 2/28/95 GJ at 127.

Q. Why did he volunteer this information -- do you know?

A. I believe that he had been told by someone -- perhaps Maggie -- that I was someone in the counsel's office who might be picking up some of the work that Vince had been handling for the first family, and I think that he approached me because of that.

Id. at 128.

[1587] Neuwirth 7/10/95 Senate Whitewater Comm. Depo. at 162-63.

[1588] Barnett 5/2/96 GJ at 26.

[1589] Id. at 26-27.

[1590] Secret Service Presidential movement logs (July 24, 1993) (Doc. No. 337-DC-00000164).

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to the residence at 2:15 p.m.[1592] At 4:09 p.m., the Clintons went to the family theater.[1593] At 5:56 p.m., they returned to the residence.[1594] At 8:22 p.m., they left the White House for the Hotel Washington, where they remained until 10:37 p.m.[1595]

On Sunday morning, July 25, the President went to the Robert Trent Jones golf club, returning to the residence at 3:40 p.m.[1596] Mrs. Clinton remained in the residence for the entire day.[1597]

At 2:06 p.m. on Sunday, July 25, Williams entered the White House compound.[1598] Records show that she turned off the alarm in the First Lady's West Wing office at 2:27 p.m., and turned it on at 2:32 p.m.[1599] At 2:36 p.m., Secret Service logs show Williams entered the White House residence and went to the second floor.[1600] Once on the second floor, access to both the

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[1591] Secret Service First Lady's movement logs (July 24, 1993) (Doc. No. 337-DC-00000145).

[1592] Secret Service Presidential movement logs (July 24, 1993) (Doc. No. 337-DC-00000163).

[1593] Id.

[1594] Id.

[1595] Id.

[1596] Secret Service Presidential movement logs (July 25, 1993) (Doc. No. 337-DC-00000167).

[1597] Secret Service First Lady's movement logs (July 25, 1993) (Doc. No. 337-DC-00000146).

[1598] White House gate records (July 25, 1993) (Doc. No. 211-DC-00000517).

[1599] Secret Service alarm records (July 25, 1993) (Doc. No. 211-DC-00000098).

[1600] Secret Service residential movement logs (July 25, 1993) (Doc. No. 336-DC-00000853).

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second and third floors is unrestricted, and no further record was kept of her location.[1601] The logs show that Williams left the residence at 2:50 p.m.[1602] and left the White House compound at 3:30 p.m.[1603]

Williams was questioned about this visit to the residence in a Senate hearing on December 11, 1995. She said, "I don't recall what I was doing, but because I am often at the residence and often on the White House complex during the weekend, Saturday and Sunday, I don't recall, but it doesn't strike me as highly unusual. As I said in my deposition, I did not recall being there. I don't think that I was there, but it doesn't strike me as extraordinary that I was there."[1604] Williams said she did not remember seeing Mrs. Clinton "but it wouldn't have been extraordinary for me to have seen her."[1605]

Williams testified that after July 22, when she put the box of documents in the closet in Room 323, she did not go into the closet until July 27, when the box was transferred to Williams & Connolly.[1606] She also said she had no knowledge of anyone going into the closet between July 22 and July 27.[1607]

When Williams was questioned again about the afternoon of July 25 during a subsequent

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[1601] G. Walters 1/24/96 Int. at 7.

[1602] Secret Service residential movement logs (July 25, 1993) (Doc. No. 336-DC-00000853).

[1603] White House gate records (July 25, 1993) (Doc. No. 211-DC-00000516).

[1604] Senate Whitewater Comm. Hearing, supra note 408, at 5-6 (Dec. 11, 1995) (testimony of M. Williams).

[1605] Id. at 6.

[1606] M. Williams 10/28/94 Int. at 36 (sworn testimony).

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grand jury appearance, she said although she would not disagree with the Secret Service logs, she did not remember being in the residence that day or whether she saw Mrs. Clinton.[1608] Williams assumed that she had her key chain with her that day, including the key to the closet in Room 323 which she maintained.[1609] She did not give the key to anyone that day and she did not open the closet where she had put the box of documents from Foster's office.[1610]

Mrs. Clinton testified in the grand jury that Williams did not show her any documents from Foster's office during the weekend.[1611] She also said she did not go to her office on the third floor of the residence over that weekend and denied that Williams showed her any documents from Foster's office.[1612] Mrs. Clinton had previously stated in July 1995 that she did not see or review the documents from Foster's office that were stored in the residence before they were turned over to Williams & Connolly on July 27.[1613]

The FBI laboratory conducted fingerprint analysis on all documents identified by Williams & Connolly as those obtained from the White House on July 27. The laboratory tested 2,581 items and found 1,721 fingerprints or palm prints. None of the prints matched those of President Clinton, Mrs. Clinton, Margaret Williams, or Susan Thomases.[1614] Four fingerprints of

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[1607] Id.

[1608] M. Williams 4/23/96 GJ at 51, 53-54.

[1609] Id. at 51.

[1610] Id. at 52.

[1611] H. Clinton 1/26/96 GJ at 101.

[1612] Id. at 100-01.

[1613] H. Clinton 7/22/95 Depo. at 28.

[1614] Federal Bureau of Investigation Laboratory Report at 1 (July 16, 1996); Federal

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Webster Hubbell were found on three documents.[1615] Those documents were 1) a page headed "PROPOSED PRESIDENTIAL RETREAT PROPERTIES" dated December 7, 1992;[1616] 2) a facsimile cover sheet from Ron Maxwell to Hubbell dated November 13, 1992;[1617] and 3) a page headed "WILLIAM AND HILLARY CLINTON STATEMENT OF FINANCIAL CONDITION," which was dated December 31, 1991, and which bore a facsimile transmission line dated December 10, 1992.[1618]

Telephone records showed that three calls were placed from Thomases's weekend residence in Rhode Island to Williams's home telephone number on July 24 and 25, 1993.[1619] Each call lasted one or two minutes.[1620] Thomases testified that she did not remember speaking to Williams that weekend,[1621] but said based on the calls' duration, she believed she reached Williams's answering machine.[1622] Telephone records also showed one call from Thomases's

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Bureau of Investigation Laboratory Report at 1 (July 17, 1996).

[1615] Federal Bureau of Investigation Laboratory Report at 1-2 (July 16, 1996); Federal Bureau of Investigation Laboratory Report at 1-2 (July 17, 1996).

[1616] See Proposed Presidential Retreat Properties (Dec. 7, 1992) (Doc. No. DEK016182).

[1617] See Fax Transmission cover sheet from Ron Maxwell, of Ron Calhoun & Associates Residential Division Home Equity Relocation Center, to Webb Hubbell, Rose Law Firm attorney (Nov. 13, 1992) (Doc. No. DEK016217).

[1618] See William and Hillary Clinton statement of financial condition (Dec. 13, 1991) (Doc. No. DEK011825).

[1619] Thomases's phone records (bill dated Aug. 18, 1993) (Doc. No. 387-DC-00000167).

[1620] Id.

[1621] Thomases 5/2/96 GJ at 68-69.

[1622] Id. at 70-71.

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residence to the home number of the First Lady's scheduler -- Patti Solis -- on July 24.[1623] Thomases said she did not remember talking to Solis that weekend.[1624]

I. The Foster Note.

1. Discovery.

On Monday, July 26, Associate Counsel Steve Neuwirth discovered torn pieces of yellow paper in Foster's briefcase.[1625] Neuwirth discovered the torn pieces of paper, which he later pieced back together to form the note, as he concluded his inventory of the remaining documents in Foster's office.[1626]

[1623] Thomases's phone records (bill dated Aug. 18, 1993) (Doc. No. 387-DC-00000167).

[1624] Thomases 5/2/96 GJ at 71.

[1625] Neuwirth 2/28/95 GJ at 134-35.

[1626] Id. at 134. The note, which was pieced back together, said:

I made mistakes from ignorance, inexperience and overwork

I did not knowingly violate any law or standard of conduct

No one in The White House, to my knowledge, violated any law or standard of conduct, including any action in the travel office. There was no intent to benefit any individual or specific group

The FBI lied in their report to the AG

The press is covering up the illegal benefits they received from the travel staff

The GOP has lied and misrepresented its knowledge and role and covered up a prior investigation

The Ushers Office plotted to have excessive costs incurred, taking advantage of Kaki and HRC

The public will never believe the innocence of the Clintons and their loyal [*] staff

The WSJ editors lie without consequence

I was not meant for the job or the spotlight of public life in Washington.

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Bernard Nussbaum gave the note to the Park Police on Tuesday, July 27.[1627] The White House confirmed the note's existence to the press on July 28.[1628] The note's contents were not disclosed until an August 10 joint press conference conducted by the Park Police and DOJ.[1629]

On July 29, Neuwirth was first interviewed by the Park Police about the note's discovery. The report said:

> [H]e was in the process of gathering and packing Mr. Foster's personal effects for delivery to the family when he turned the briefcase sideways in order to fit it into a box without causing damage to a photograph of the President with Mr. Foster's daughter, Laura. When he did this some torn yellow paper scraps fell out of the briefcase and he noticed handwriting on them. He then retrieved a number of

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Here ruining people is considered sport.

Fiske Report, supra note 12, at Tab 5. Note the Park Police identified the word "loyal" as "legal." U.S. Park Police's unreleased transcription of the note (July 1993) (Doc. No. 105-DC-00000011).

[1627] Detective Joseph Megby, U.S. Park Police Report at 1 (July 27, 1993).

[1628] Press Statement issued by Bernard Nussbaum (July 28, 1993) (Doc. No. 033-DC-00001050) (White House Doc. No. 001023).

[1629] Press Conference, Department of Justice, United States Park Police, and Federal Bureau of Investigation, Report on Death of Vincent Foster, Former Deputy Assistant to the President (Aug. 10, 1993). Fingerprint and handwriting examinations were performed on the note. The FBI lab identified one palm print of value on the note and identified it as Nussbaum's print. Federal Bureau of Investigation Laboratory Report at 1 (July 5, 1995). See Nussbaum 7/12/95 Senate Whitewater Comm. Depo. at 284 (Nussbaum handled the note at various points, including when Neuwirth first showed it to him, when he stored it that night, and when he showed it to Lieutenant Megby).

Three separate handwriting analyses were performed -- one by the Capitol Police and two by the FBI lab -- comparing the note to three different sets of samples of known handwriting of Vince Foster. Each of the three analyses concluded the handwriting was Foster's. See Fiske Report, supra note 12, at Tab 1 (Federal Bureau of Investigation Laboratory Report at 1 (June 17, 1994)); Federal Bureau of Investigation Laboratory Report at 1 (Nov. 9, 1995); United States Capitol Police Sergeant Larry G. Lockhart, Laboratory Report, U.S. Park Police Case No. 30502-93, at 2 (July 29, 1993); (Doc. Nos. 105-DC-00000022 through 24).

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other similar scraps from the bottom of the case and took them to the table in Mr. Nussbaum's office where he assembled the document . . . .[1630]

On July 30, Neuwirth again was interviewed, this time by the FBI. He said on Friday, July 23, while he was in Arkansas, attending Foster's funeral, Nussbaum asked him to conduct a review of the work files in Foster's office and to take any remaining personal items to Foster's attorney.[1631] Neuwirth said he began the review around 10:00 a.m. on July 26.[1632] He then essentially repeated what he had told the Park Police about the note's discovery.[1633] Neuwirth's many subsequent statements were consistent with these accounts.[1634]

When Nussbaum turned the note over to Park Police Lieutenant Joseph Megby at 9:15 p.m. on July 27, Nussbaum said that he had directed Neuwirth to "take a detailed inventory of the files and material" in Foster's office.[1635] Neuwirth said: "In a brief[case], known to be in the office and thought to be empty, he [Neuwirth] found the torn pieces of a hand[-]written page. The scraps were dumped out and then taken to Mr. Nussbaum's [o]ffice where they were assembled and Mr. Nussbaum was notified."[1636]

According to the report of Nussbaum's interview with the FBI on July 30, Neuwirth told Nussbaum "that as he was packing items of FOSTER's personal property in a box, he discovered

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[1630] Detective Peter Markland, U.S. Park Police Report at 2 (Aug. 5, 1993).

[1631] Neuwirth 7/30/93 FBI Int. at 1.

[1632] Id.

[1633] See id.

[1634] See Neuwirth 2/28/95 GJ at 134-35; Neuwirth 7/10/95 Senate Whitewater Comm. Depo. at 185-87; Neuwirth 5/13/94 Fiske Int. at 8.

[1635] Detective Joseph Megby, U.S. Park Police Report at 1 (July 27, 1993).

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the scraps of paper in the bottom of FOSTER's briefcase. NEUWIRTH had been in [the] process of placing the briefcase in a box when he tipped the briefcase over on its side and several of the scraps of paper fell out. NEUWIRTH then discovered the rest of the scraps of paper located at the bottom of the briefcase."[1637]

Because of Neuwirth's discovery of the note in a briefcase that was in Foster's office on July 22 and was reviewed by Nussbaum during the search that day, various questions were raised: whether the note was in the briefcase on July 22; whether Nussbaum or anyone other than Foster saw the note before Neuwirth discovered it.[1638] Separate questions were raised about why it took White House officials until approximately thirty hours to tell law enforcement of the note's existence. These very questions, of course, were the focus of the July-August 1993 FBI

[1636] Id.

[1637] Nussbaum 7/30/93 FBI Int. at 2.

[1638] There was a small, missing piece near the bottom of the note. U. S. Park Police Officer Peter J. Simonello, Mobile Crime Lab Report Supplement, U.S. Park Police Case No. 30502-93 at 1 (July 29, 1993) (Doc. No. 105-DC-00000018). It was unclear when or how the piece came to be missing. Neuwirth did not remember a missing piece. Neuwirth 7/10/95 Senate Whitewater Comm. Depo. at 191. On the other hand, Nussbaum did remember the missing piece. Nussbaum 7/12/95 Senate Whitewater Comm. Depo. at 282. A number of possibilities exist. The piece may have been lost when the note was torn and/or put into the briefcase. It may have been lost when Neuwirth was picking the pieces out of the briefcase. It may have been lost on the various occasions on July 26 and July 27 when Nussbaum was showing the note to people, such as Lisa Foster (note, also, that Heymann remembered the pieces falling on the floor when Lieutenant Megby took possession of it. Heymann 6/13/95 GJ at 29). There is even a possibility the piece may have been lost after the note was turned over to law enforcement. Megby's report, for example, does not mention a missing piece; it simply said: "Mr. Nussbaum had before him on the table small pieces of yellow lined note paper which he was assembling into a whole page. The assembled pieces revealed a note." Detective Joseph Megby, U.S. Park Police Report at 1 (July 27, 1993). The whereabouts of the missing piece, and when and how it came to be missing, remain unresolved.

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investigation conducted at the Department of Justice's direction. The FBI concluded there was insufficient evidence to prosecute any person for obstruction of justice.[1639] This Office's investigation uncovered additional evidence relating to the note.

2. Handling of Briefcase before Discovery of Note.

Because Neuwirth found the note in Foster's briefcase, and the note was not found during the search on July 22, the Independent Counsel investigated whether the note was in the briefcase on July 22. As described in detail above, Patsy Thomasson testified that she saw the briefcase on the night of July 20 and that it appeared to be filled with documents.[1640] No other witness acknowledged seeing or handling Foster's briefcase before the search on July 22.

Many of the thirteen people present at the search on July 22 (including Nussbaum) remembered Nussbaum removing documents from Foster's briefcase and describing their contents to the assembled group.[1641] Two people, the Park Police's Markland and Hume, specifically remembered Nussbaum looking into the briefcase after he had removed the documents from the briefcase.[1642]

[1639] See Press Conference, Department of Justice, United States Park Police, and Federal Bureau of Investigation, Report on Death of Vincent Foster, Former Deputy Assistant to the President (Aug. 10, 1993) (statement of SAC, FBI Washington field office, Bob Bryant).

[1640] Thomasson 8/31/94 Int. at 32 (sworn testimony).

[1641] Adams 5/9/95 GJ at 32-33; Burton 3/22/95 GJ at 93-94; Condon 5/16/95 GJ at 13; Flynn 5/25/95 GJ at 14-15; Hume 5/23/95 GJ at 41-43; Margolis 6/14/95 GJ at 32-33; Markland 5/23/95 GJ at 31; Neuwirth 2/28/95 GJ at 118-19; Nussbaum 5/26/94 Fiske GJ at 50; Salter 5/16/95 GJ at 15-16; Spafford 6/28/95 GJ at 16-17.

[1642] Hume 5/23/95 GJ at 44-45; Markland 5/23/95 GJ at 31; Captain Charles Hume, U.S. Park Police Report entitled "Review of documents from Vincent Foster's Office" at 2 (Aug. 4, 1993).

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Nussbaum was interviewed by the Park Police on Thursday, July 29, 1993, and again by the FBI on Friday, July 30, 1993. In the Park Police interview, Nussbaum described his memory of the briefcase's search on July 22. The interview/report said:

> Mr. Nussbaum stated it was his recollection that he removed materials from the briefcase, which remained on the floor, and placed them on the desk in front of them. He then went through the materials. He inferred that because of this he had missed the small scraps of paper that obviously remained in the bottom of the briefcase.[1643]

Nussbaum also remembered that he later moved the briefcase back to the wall behind him.[1644]

A report of Nussbaum's interview with the FBI on July 30 said:

> During the inventory, NUSSBAUM removed the files and papers from VINCENT FOSTER's briefcase and reviewed those items. After the contents of the briefcase were removed he picked up the briefcase and placed it against the wall behind FOSTER's desk.[1645]

Neuwirth, according to the report of his 1993 FBI interview:

> speculated that the pieces of paper may have been stuck down in a corner of the briefcase and therefore not seen during the July 22, 1993 inventory of Foster's office. . . . [He] confirmed that the briefcase from which the scraps were recovered was the same briefcase which BERNARD NUSSBAUM reviewed during the inventory of VINCENT FOSTER's [o]ffice on July 22, 1993.[1646]

The report of Neuwirth's 1994 statement to Mr. Fiske's office said:

[1643] Detective Peter Markland, U.S. Park Police Report at 1 (Aug. 5, 1993).

[1644] Id.

[1645] Nussbaum 7/30/93 FBI Int. at 1; see also Nussbaum 5/26/94 Fiske GJ at 50-51; Nussbaum 6/13/95 GJ at 205-07. Nussbaum said in the grand jury the briefcase contained Foster's file on the Travel Office. Nussbaum 6/13/95 GJ at 205-06. Spafford's notes also showed that Travel Office documents were in the briefcase. Excerpt from Spafford's handwritten notes (July 22, 1993) (Doc. No. 296-DC-00000016).

[1646] Neuwirth 7/30/93 FBI Int. at 1-2.

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> he [Neuwirth] is not sure if he was in Foster's office on July 22 when the contents of Foster's briefcase were removed and described. It is his "understanding" that "something" was taken out of the briefcase during the search. He said that it was sitting on the floor behind Foster's desk but that he has no recollection of the briefcase or specifically its interior, being shown to those present.[1647]

The FBI report of Cliff Sloan's July 30, 1993 interview said: "Sloan believed that all the items were taken out of the briefcase however he did not examine the empty briefcase at that time."[1648]

Sloan wrote notes to himself after that FBI interview. His notes said:

> They questioned me extensively about the briefcase. I explained that Bernie had taken some files out -- I was not sure whether they were in file folders or not. The briefcase was relatively thin and was not bulging. I cannot remember exactly whether I looked in the briefcase or not, but I think I recall thinking it was empty because I thought it was a personal effect which could have been sent to Jim Hamilton.[1649]

The report of Burton's July 30, 1993 interview said he:

> recalled that FOSTER's briefcase was emptied by BERNARD NUSSBAUM and the contents, which consisted of files and papers, were reviewed by NUSSBAUM. BURTON stated that after NUSSBAUM removed the papers and files, he observed the briefcase to be empty with the exception of several paperclips and a single "post-it" paper located in the bottom of the briefcase.[1650]

Burton contended in the grand jury that he did not view his memory as inconsistent with his belief that Neuwirth discovered the note on July 26 in that briefcase:

> I just want to say that there's nothing about what I saw that day at the search and having seen Bernie take all the paper out of the briefcase and later hearing that as

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[1647] Neuwirth 5/13/94 Fiske Int. at 7; see also Neuwirth 2/28/95 GJ at 118-19.

[1648] Sloan 7/30/93 FBI Int. at 1; see Sloan 4/4/95 GJ at 79 (claiming no clear memory because the briefcase did not feature prominently).

[1649] Sloan's handwritten notes (after July 30, 1993) (Doc. AE-DC-00000003); see Sloan 4/4/95 GJ at 80.

[1650] Burton 7/30/93 FBI Int. at 1 (emphasis added).

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somebody was cleaning out the briefcase that 28 small slips of paper that had been tucked away in the corner of the briefcase fell out. That is as consistent to me as anything else.

. . . .

I mean, Bernie did not pick up the briefcase and dump it out and scatter all the dirt and paperclips and everything that you would have if you did that, you know, on the desk. I mean, that -- again, the purpose of the search was to look for documents . . . ."[1651]

The two FBI agents present, Agents Salter and Condon, prepared a report that was dictated August 5, 1993, after the note's discovery, that included their memories of the search. This report said:

> During the inventory, BERNARD NUSSBAUM removed the contents of a leather, satchel type briefcase which had been on the floor adjacent to the desk. The briefcase was identified as belonging to VINCENT FOSTER. The items which were in the briefcase (papers and files) were removed and reviewed by NUSSBAUM. After those items were reviewed they were not placed back in the briefcase but they remained on top of the desk. NUSSBAUM then pick[ed] up the briefcase and placed the briefcase against the back wall of the office. At the time, NUSSBAUM placed the briefcase against the back wall of the office it appeared as though the briefcase was empty. At no time did the undersigned agents [Salter and Condon] observe the inside of the briefcase.[1652]

Neither Salter nor Condon remembered whether Nussbaum looked into the briefcase again after removing documents from it.[1653]

Park Police Captain Hume also wrote a report on the search:

> At one point, Nussbaum pulled some papers out of a leather valise/briefcase that was sitting on the floor behind the desk. He put them on the desk and went through them. He then looked in the valise/briefcase again, but did not take

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[1651] Burton 3/22/95 GJ at 105-06.

[1652] Dennis Condon and Scott Salter, FBI Report, FBI File # WMFO 175B-WF-187743 at 1-2 (July 22, 1993; dictation date Aug. 5, 1993).

[1653] Salter 5/16/95 GJ at 16-17; Condon 5/16/95 GJ at 14.

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anything out of it. A little later he moved the valise/briefcase away from the desk and placed it on the floor adjacent to the exterior wall directly behind him and the desk.[1654]

In addition, the FBI interviewed Hume on August 2, 1993. The interview report said:

> HUME advised that during the inventory BERNARD NUSSBAUM removed documents from a briefcase which was in the office and identified as belonging to FOSTER. HUME believed that when these items which consisted of files and papers had been taken out of the briefcase it was believed that the briefcase was empty. After BERNARD NUSSBAUM reviewed the items which were in the briefcase, HUME recalled that NUSSBAUM picked up the briefcase looked in it and indicated that the briefcase was empty. HUME recalled that a short while later during the inventory, NUSSBAUM picked up the briefcase again and at that time moved it against the back wall of FOSTER's office. HUME advised the interviewing agent that at no time was he able to see the bottom portion inside the briefcase.[1655]

Park Police Detective Markland, in his interview report of Nussbaum that occurred on July 29, 1993, wrote:

> I informed Mr. Nussbaum that I was seated on the small couch directly across from and facing him and that I had a clear view of the briefcase when he removed its contents, also that after the contents were removed I could see that he spread open the briefcase and visually inspected it as if to confirm that it was, indeed, empty. Mr. Nussbaum did not recall doing what I described.[1656]

The FBI report of an interview with Markland on August 2, 1993, said: "After those items had been reviewed, Markland observed Nussbaum pick up the briefcase, open the top of

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[1654] Captain Charles Hume, U.S. Park Police Report by entitled "Review of documents from Vincent Foster's Office" at 2 (Aug. 4, 1993) (emphasis added).

[1655] Hume 8/2/93 FBI Int. at 1 (emphasis added).

[1656] Detective Peter Markland, U.S. Park Police Report at 1 (Aug. 5, 1993) (emphasis added).

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the briefcase, look inside it and declared that it was empty."[1657] Markland subsequently told the grand jury that he did not believe the briefcase ever left the floor.[1658] He opined, in any event, that "if the note was in the briefcase, Mr. Nussbaum would have seen it, so it was either in the briefcase and he didn't tell us about it or it was not in the briefcase on that morning."[1659]

David Margolis, according to a report of his 1993 interview with the FBI:

> [R]ecalled that at one point during the inventory, items were removed from a briefcase in FOSTER's office and that the items were reviewed by BERNARD NUSSBAUM. MARGOLIS believed those items to be papers and files. After reviewing these items, NUSSBAUM picked up the briefcase which was apparently empty at that time and placed it against the back wall of FOSTER's office. MARGOLIS was not able to observe if there were any other items remaining in the bottom of the briefcase.[1660]

Margolis did not remember whether Nussbaum looked into the briefcase again after removing documents from it.[1661]

According to a report of his 1993 statement to the FBI, Roger Adams:

> [R]ecalled that at one point during the inventory NUSSBAUM located a briefcase somewhere behind VINCENT FOSTER's desk. ADAMS recalled that there was some conversation concerning whether or not FOSTER carried that briefcase with him to and from work on a daily basis. NUSSBAUM removed items from the briefcase, those items consisting primarily of papers and files and reviewed those items. ADAMS stated that from his vantage point he was not able to observe whether there were any items remaining in the bottom of the briefcase after the papers and files had been removed by NUSSBAUM.[1662]

[1657] Markland 8/2/93 FBI Int. at 1 (emphasis added).

[1658] Markland 5/23/95 GJ at 32.

[1659] Id.

[1660] Margolis 8/3/93 Int. at 1; see Margolis 6/14/95 GJ at 33-34.

[1661] Margolis 6/14/95 GJ at 33-34.

[1662] Adams 8/3/93 FBI Int. at 1.

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Adams said he could not remember whether Nussbaum looked into the briefcase after removing items from it.[1663]

Michael Spafford remembered that Nussbaum picked up the briefcase, took out the files, and put the briefcase back down. Spafford did not remember Nussbaum saying the briefcase was empty or looking back into the apparently empty briefcase after taking the files out.[1664]

Spafford testified that after the search's conclusion on July 22, he witnessed a discussion after the investigators had left Foster's office:

> [A]t the conclusion when I had loaded up the documents into a box, all the investigators left. So then it was just myself, Mr. Nussbaum, and Mr. Sloan. Mr. Sloan had picked up the black briefcase, because I think he was going to give it to me as a personal item. And he looked in the briefcase, and he said there appeared to be scraps of paper in the bottom of the briefcase.
>
> And Mr. Nussbaum said, Don't worry about it; we're going to look through all of this stuff later. And then Mr. Sloan just put the briefcase down. And I left and met with Mr. Margolis and Mr. Markland downstairs.[1665]

Spafford said he could not see into the bag[1666] and "[o]ne of the reasons I remember [this incident] so clearly is the following week then, when the torn-up note was discovered and I became aware

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[1663] Adams 5/9/95 GJ at 34. The two Secret Service agents present added little. The report of Secret Service Agent Flynn's 1993 interview said: "Flynn could not recall any details of this portion of the inventory but knew that items were removed from the briefcase and he did not recall any items being put back into the briefcase. Flynn could not recall any other details about that portion of the inventory." Flynn 8/3/93 FBI Int. at 1. Secret Service Agent Imbordino "advised that he could not provide specific . . . information regarding the portion of the inventory during which VINCENT FOSTER's briefcase was handled." Imbordino 8/2/93 FBI Int. at 1.

[1664] Spafford 6/28/95 GJ at 16. Spafford's notes also showed the briefcase was searched and that its contents included Travel Office documents. Spafford's handwritten notes (July 22, 1993) (Doc. No. 296-DC-00000016).

[1665] Spafford 6/28/95 GJ at 25-26 (emphasis added).

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of that, I immediately connected the two."[1667]

When Spafford was interviewed on May 24, 1994, he did not provide this information to the FBI agent interviewing him.[1668] Spafford was asked in the grand jury why he had not told investigators about this observation in his interview on May 24, 1994, or at any other time before 1995. He responded, "Nobody asked me."[1669]

When Nussbaum was asked about the incident, Nussbaum said he did not remember any conversation with anyone on July 22 about scraps of paper in Foster's briefcase.[1670] He said he neither engaged in, nor overheard such a conversation.[1671] Nussbaum believed he would definitely remember the conversation had it happened.[1672] Nussbaum also believed that Sloan would have remembered the discussion because Sloan had a very good memory.[1673] Sloan similarly said:

> As I understand Mr. Spafford's account he says that I picked up Mr. Foster's briefcase, held it open by the handles and remarked to Mr. Nussbaum that there appeared to be scraps of paper in the bottom of the briefcase. All I can say about that . . . is that to my recollection that did not happen. By that I mean I have no recollection of anything remotely like that incident, and I think that I would recall if it had happened. Mr. Spafford and I have an honest difference in recollection on this point, and I think he is mistaken. My consistent recollection on this

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[1666] Id. at 26.

[1667] Id.

[1668] See Spafford 5/24/94 Fiske Int. at 2-3.

[1669] Spafford 6/28/95 GJ at 31-32.

[1670] Nussbaum 7/11/95 Int. at 1.

[1671] Id.

[1672] Id.

[1673] Id.

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subject has been, and continues to be, that I learned of the scraps of paper for the first time the night of Tuesday, July 27th, 1993.[1674]

Deborah Gorham, Foster's secretary, was interviewed about the briefcase's post-search handling. The interview report said:

> GORHAM advised that on Monday, July 26, 1993, she was assigned to assist STEPHEN NEUWIRTH in the review of items in FOSTER's office. GORHAM recalled that at one point, FOSTER's briefcase was "in the way" so she picked it up and placed it with a group of personal items which were to be returned to the FOSTER family. GORHAM stated that it [is] her practice never to look in another's individual['s] briefcase but that as she picked it up she was aware that it was empty with the exception of what she believed to be some yellow "post-it" notes. GORHAM was not certain that these were "post-it" notes but she stated that whatever it was in the bottom of the briefcase was generally of the size and color of a "post-it" note. GORHAM stated that the items she saw in the bottom of the briefcase may have been "post-it" notes or it may have been pieces from a sheet of yellow paper.[1675]

Gorham also said in later interviews that she saw a single dark gold folder and a single white sheet of paper in the briefcase in addition to the yellow item.[1676]

3. Disclosure of Note to Law Enforcement.

The note was not disclosed to law enforcement officials until the evening of July 27 when Nussbaum told Attorney General Janet Reno.[1677] The Attorney General told Nussbaum to turn it over to the Park Police, and Nussbaum complied.[1678] The Independent Counsel investigated the reason for the approximate thirty-hour delay before the Attorney General, and then the Park

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[1674] Senate Whitewater Comm. Hearing, supra note 408, at 67 (Aug. 3, 1995) (testimony of C. Sloan) (emphasis added).

[1675] Gorham 8/3/93 FBI Int. at 1-2 (emphasis added).

[1676] Gorham 4/19 & 26/94 Fiske Int. at 13; see Gorham 6/2/95 GJ at 24.

[1677] Nussbaum 7/30/93 FBI Int. at 2.

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Police, were notified about the note.[1679]

The statements of five White House officials involved in discussions on the night of July 26 and the morning of July 27 about the note (Nussbaum, Neuwirth, McLarty, Burton, and Gergen) were essentially consistent. First, they said they wanted to research whether any privileges applied to the note or portions thereof.[1680] Second, they wanted to show the note to Mrs. Foster who was in Arkansas.[1681] Third, they wanted to notify the President, who was in Chicago on July 26, before the note was disclosed to law enforcement officials.[1682]

Nussbaum said Burton questioned whether there were attorney-client privileges applicable to the note, whether there were "privacy issues," and whether there would be an obstruction of justice issue if the note were not turned over to law enforcement.[1683] Neuwirth

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[1678] See id. at 2-3.

[1679] See id. at 1-2 (the note was found at approximately 4:00 p.m. on July 26 and the Park Police was notified at approximately 9:00 p.m. on July 27); Press Conference, Department of Justice, United States Park Police, and Federal Bureau of Investigation, Report on Death of Vincent Foster, Former Deputy Assistant to the President (Aug. 19, 1993) (statement of SAC, FBI Washington field office, Bob Bryant). Agent Bryant of the FBI, said the note was discovered at approximately 4:00 p.m. on July 26 and the Park Police were notified at approximately 9:00 p.m. on July 27; Detective Joseph Megby, U.S. Park Police Report at 1 (July 27, 1993) (the Park Police were notified at 9:15 p.m. on July 27).

[1680] See Neuwirth 2/28/95 GJ at 140-41; McLarty 4/25/95 GJ at 65; Burton 3/22/95 GJ at 111; Gergen 10/21/94 Int. at 6. Jim Hamilton, who had a conversation with some of the White House officials on July 27, said there was discussion of possible redaction of the note. Hamilton 10/23/95 Int. at 12.

[1681] See Nussbaum 5/13/94 Fiske Int. at 14; Neuwirth 5/13/94 Fiske Int. at 9; McLarty 4/25/95 GJ at 65; Burton 7/30/93 FBI Int. at 2; Gergen 10/21/94 Int. at 7.

[1682] See Nussbaum 5/13/94 Fiske Int. at 14; Neuwirth 5/13/94 Fiske Int. at 9; McLarty 7/30/93 FBI Int. at 1; Burton 7/30/93 FBI Int. at 2; Gergen 10/21/94 Int. at 7.

[1683] Nussbaum 7/12/95 Senate Whitewater Comm. Depo. at 303.

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conducted research on the night of July 26, and concluded that no privileges applied.[1684] Lisa Foster was shown the note around 6:00 p.m. on July 27.[1685] Nussbaum discussed the note with President Clinton around the same time.[1686] Nussbaum said the President already appeared to be aware of the note's contents.[1687] When Nussbaum was asked if the appearance that President Clinton knew about the note's contents struck him as odd he replied, "No. . . . one of the reasons it didn't strike me as odd is I had read it to McLarty and it's inconceivable to me that McLarty, in one form or another, didn't convey what I read."[1688]

Nussbaum showed Mrs. Clinton the note on July 26, in his office and in front of Burton and Neuwirth, shortly after Neuwirth pieced the note together and showed it to Nussbaum.[1689] In their initial interviews with the FBI in 1993, neither Nussbaum, Burton, nor Neuwirth mentioned this incident.[1690] The reports of their interviews did not indicate whether they were asked to list

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[1684] Neuwirth 5/13/94 Fiske Int. at 9. The note did not record any attorney-client communications. Parts of the note (e.g., "the FBI lied in their report to the AG") arguably constitute Foster's mental impressions, conclusions, or opinions. See Fed. R. Civ. P. 26(b) (3). They almost certainly were not written in anticipation of litigation, although they may have been written in anticipation of congressional hearings. In other contexts, the White House has claimed to the Independent Counsel that such material is protected work product.

[1685] Entry records show she entered the White House at 5:56 p.m. White House WAVES records (July 27, 1993) (Doc. No. 336-DC-00000351).

[1686] Nussbaum 7/12/95 Senate Whitewater Comm. Depo. at 315.

[1687] Id. at 320. Nussbaum said President Clinton told him something to the effect of "I know all about it [the note]." Id.

[1688] Id. at 317.

[1689] Id. at 293-94.

[1690] See, e.g., Nussbaum 7/30/93 FBI Int.; Burton 7/30/93 FBI Int.; Neuwirth 7/30/93 FBI Int.

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all people who had seen the note after its discovery.[1691] According to an official, albeit incomplete, log of Presidential calls maintained at the White House, the President and Mrs. Clinton had a nine-minute phone conversation at 5:57 p.m. on July 26, shortly after Mrs. Clinton was shown the note and shortly before she departed the West Wing for the residence.[1692]

In addition to Nussbaum showing Mrs. Clinton the note on July 26,[1693] Susan Thomases ultimately acknowledged that she also learned about the Foster note from Nussbaum on July 26.[1694] In Thomases's first sworn testimony on that question, she said she learned about the note from the media, and did not discuss it with Nussbaum until long after it was found.[1695] In her Senate deposition, Thomases changed her testimony about how she learned about the note: "The first person who told me about it was Bernie Nussbaum."[1696] In her most recent grand jury appearance, Thomases was questioned about the change:

> Q. And do you remember, in rereading your testimony, that you had said previously that you didn't even talk to Bernie Nussbaum about it at any time proximate to the discovery of the note?
>
> A. That's what I initially said.
>
> Q. And you're now saying you believe that is incorrect?

[1691] Nussbaum 7/30/93 FBI Int.; Burton 7/30/93 FBI Int.; Neuwirth 7/30/93 FBI Int.

[1692] White House telephone memo (July 26, 1993) (Doc. No. 442F-DC-00002514).

[1693] Nussbaum 7/12/95 Senate Whitewater Comm. Depo. at 284-88.

[1694] Thomases 7/17/95 Senate Whitewater Comm. Depo. at 119-20. Although Nussbaum said he did not remember telling Thomases of the note that day, he understood why he would tell Thomases and he saw nothing wrong with that. Senate Whitewater Comm. Hearing, supra note 408, at 19-20 (Aug. 10, 1995) (testimony of B. Nussbaum).

[1695] Thomases 9/9/94 Int. at 74 (sworn testimony).

[1696] Thomases 7/17/95 Senate Whitewater Comm. Depo. at 119-20.

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. . . .

A. Yeah, I mean, I think that's a possibility, because I have a clear recollection of my conversation with Bernie when he told me that he'd found the note and about the note.

. . . .

A. I don't remember whether it was the public hearing or him talking about it, but I now remembered a conversation that he and I had about it -- or a conversation that I subsequently initiated with him about it.

Q. But what I'm trying to make clear is: Are you saying that there was a conversation that you had with Bernie sometime in 1994 or '95 that caused you to refresh your recollection about '93?

A. No, a '95 conversation has caused me to refresh my recollection about '93.

. . . .

A. I don't know. It's not that like he called me and said to me, "Lookit [sic], Susan, do you remember when we had a conversation?" There was just something about his testimony or something else that caused me to flash on the fact that he had called me and told me about it at the time. I mean, that -- and I could say, "Gee, I don't remember it," but now I do have a relatively -- "clear" is too strong a word, but I have a sense that he called me and what he said to me at that time.[1697]

After Nussbaum disclosed the note to the Attorney General, the Park Police was contacted, and Lieutenant Megby came to the White House and took custody of the note.[1698]

J. The Transfer of Documents to Williams & Connolly.

1. Monday, July 26, 1993.

As previously discussed, Steve Neuwirth inventoried Foster's office on July 26 and

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[1697] Thomases 5/2/96 GJ at 75-77.

[1698] Detective Joseph Megby, U.S. Park Police Report at 1 (July 27, 1993); Megby 8/2/93

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discovered the torn-up writing or note in Foster's briefcase.[1699] By this point, the Clinton personal documents had not yet been transferred from the residence to Williams & Connolly. Telephone records showed discussion among several of the people discussed in Section H of this report on July 26.[1700]

Barnett's telephone logs show he spoke with Thomases and Williams (at her home) on July 26.[1701] Barnett told this Office and the grand jury that he talked about Foster's death with Thomases on July 26, and that he remembered no discussion of picking up documents from the White House.[1702] Barnett said he did not remember a specific conversation with Williams on July 26.[1703]

Thomases produced a telephone log reflecting that she received a telephone call from Barnett at her New York office on July 26.[1704] That log did not show the call was returned.[1705] Thomases testified in a Senate hearing that she did not remember this call from Barnett.[1706]

FBI Int. at 1.

[1699] Neuwirth 2/8/95 GJ at 134-35.

[1700] Barnett's telephone logs (July 26, 1993) (Doc. No. 325-DC-00000156); Thomases's telephone records (July 26, 1993) (Doc. No. 387-DC-00000226).

[1701] Barnett's telephone logs (July 26, 1993) (Doc. No. 325-DC-00000156).

[1702] Barnett 5/2/96 GJ at 28; Barnett 12/14/95 Int. at 5.

[1703] Barnett 5/2/96 GJ at 28.

[1704] Thomases's phone records (July 26, 1993) (Doc. No. 387-DC-00000226). See Thomases's redacted phone records (July 26, 1993) (Doc. No. 387-DC-00000126).

[1705] See Thomases's phone records (July 26, 1993) (Doc. No. 387-DC-00000226).

[1706] Senate Whitewater Comm. Hearing, supra note 408, at 23 (Dec. 18, 1995) (testimony of S. Thomases).

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Thomases said she did not believe that she returned Barnett's call or spoke to him on July 26.[1707]

Thomases produced telephone records showing that a three-minute call was placed at 5:24 p.m. on July 26 from Thomases's cellular telephone to the White House number of the scheduler for Mrs. Clinton, Patti Solis.[1708] Thomases testified before the Senate Whitewater Committee that she could not remember that specific call.[1709] Solis also said she did not remember any conversation with Thomases on July 26.[1710]

2. Tuesday, July 27, 1993.

On Tuesday, July 27, Barnett arranged for I. P. Barlow, an employee of Williams & Connolly, to pick up a box of documents from the closet in the White House residence.[1711] Also on July 27, the White House disclosed to law enforcement the note discovered in Foster's briefcase on July 26.[1712]

There was also the issue of whether Thomases visited Mrs. Clinton at the White House on July 27, and if so, what they discussed. Thomases testified that as of July 26, she planned to travel to Washington on July 27.[1713] Phone records show that a call was placed from Thomases's

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[1707] Id. at 24.

[1708] Thomases's cellular phone records (billing Aug. 20, 1993) (Doc. No. 387-DC-00000160).

[1709] Senate Whitewater Comm. Hearing, supra note 408, at 27 (Dec. 18, 1995) (testimony of S. Thomases).

[1710] Solis 2/9/96 Senate Whitewater Comm. Depo. at 34.

[1711] Barnett 5/2/96 GJ at 40.

[1712] See Detective Joseph Megby, U.S. Park Police Report at 1 (July 27, 1993).

[1713] Thomases 5/2/96 GJ at 79-80.

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cellular phone to Mrs. Clinton's scheduler, Solis, on July 26.[1714] But Thomases testified that as of July 26, she had no plans to see the First Lady.[1715]

Telephone logs from Thomases's New York office show that she received a call on July 27 from Solis with the following message, "HRC wants to see you today."[1716] The record reflects the call was returned.[1717] Telephone records show that a call was placed from Thomases's extension at her Washington law office to Solis's number at 11:33 a.m.[1718] Another telephone message produced by Thomases's Washington law office shows that "Evelyn" left a message for Thomases at 1:30 p.m., saying "Please call Hillary."[1719] Solis testified before the Senate Whitewater Committee that she believed Evelyn Lieberman placed that call to Thomases.[1720] Solis testified before the grand jury and in a Senate deposition that she did not remember placing a call to, or receiving a call from, Thomases on July 27.[1721]

White House records showed that Thomases, Williams, Barnett, Hubbell and Mrs.

[1714] Thomases's cellular phone records (bill dated Aug. 20, 1993) (Doc. No. 387-DC-00000160).

[1715] Senate Whitewater Comm. Hearing, supra note 408, at 28 (Dec. 18, 1995) (testimony of S. Thomases).

[1716] Thomases's phone logs (July 27, 1993) (Doc. No. 387-DC-00000227).

[1717] Id.

[1718] Willkie, Farr & Gallagher phone records (July 27, 1993) (Doc. No. 387-DC-00000208).

[1719] Thomases's phone message slip (July 27, 1993) (Doc. No. 387-DC-00000230).

[1720] Senate Whitewater Comm. Hearing, supra note 408, at 63 (May 14, 1996) (testimony of P. Solis).

[1721] Solis 4/2/96 GJ at 43; Solis 2/9/96 Senate Whitewater Comm. Depo. at 36. Note that Ms. Solis was using her married name "Doyle" at this time.

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Clinton all were in the White House residence on July 27. The following is a summary of their times in the residence:

PERSON	ENTER	EXIT
Mrs. Clinton	All day[1722]	
Maggie Williams	10:31 a.m. 1:35 p.m. 3:20 p.m.	12:05 p.m. 2:25 p.m. 4:43 p.m.[1723]
Susan Thomases	3:08 p.m. (5:27 p.m.)	4:31 p.m. 8:19 p.m.[1724]
Robert Barnett	3:03 p.m.	4:30 p.m.[1725]
Webster Hubbell	6:29 p.m.	8:19 p.m.[1726]

Ushers' logs showed that Barnett and Thomases left the residence together at 4:30 p.m.[1727]

[1722] Secret Service residential movement logs (July 27, 1993) (Doc. No. 336-DC-00000855).

[1723] Id.

[1724] Id. Secret Service logs showed that Thomases entered the residence a second time at 8:19 p.m. No exit time was listed for that visit. Id. Other evidence showed the log is inaccurate, and that 8:19 p.m. is actually the exit time. First, Secret Service gate records showed that Thomases left the entire White House compound at 8:20 p.m. The same records showed that Hubbell left the compound with Thomases at 8:20 p.m. White House gate record (July 27, 1993) (Doc. No. 211-DC-00000160). The F-1 Secret Service logs showed that Hubbell left the residence at 8:19 p.m. Secret Service residential movement logs (July 27, 1993) (Doc. No. 336-DC-00000855). These records suggested that Thomases, too, left the residence at 8:19 p.m. with Hubbell. In addition, telephone toll records showed that calls placed from the White House residence at 5:27 p.m. and 5:29 p.m. on July 27 were charged to Thomases's personal calling card. Thomases's calling card records (bill dated Aug. 25, 1993) (Doc. No. 387-DC-00000149). Those records suggested that Thomases was in the residence at 5:27 p.m.

[1725] Secret Service residential movement logs (July 27, 1993) (Doc. No. 336-DC-00000855).

[1726] Id.

[1727] Secret Service Presidential schedule (July 27, 1993) (Doc. No. 336-DC-00000864).

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Secret Service records showed that Hubbell and Thomases left the White House compound together at 8:20 p.m.[1728]

In light of the Foster note's discovery on July 26 and the July 27 transfer to Williams & Connolly of Foster's documents, Thomases was questioned extensively before the Senate Whitewater Committee and the grand jury about her visit to the White House on July 27. Thomases said she did not remember seeing Mrs. Clinton or going to the White House on that day,[1729] and said further that she did not discuss the Foster note with Mrs. Clinton until weeks or months after it was found, and only when Mrs. Clinton raised the topic.[1730]

When Thomases was asked whether she saw Webb Hubbell in the residence on the evening of July 27, she replied, "No, I don't believe I did. I don't have any memory of doing it. Again, if he says that he saw me, then he probably saw me."[1731] Thomases subsequently testified before the Senate Whitewater Committee that she remembered a meeting with Hubbell and Mrs. Clinton shortly after Foster's death, although she cannot remember the exact date.[1732] She said "[w]e just talked about the tragedy of Vince's death and we talked about how sad it was, and I remember the first time that the three of us were together, we talked a little bit about some good times that we had had together in old times before Bill Clinton was elected President, and in the

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[1728] White House gate records (July 27, 1993) (Doc. No. 211-DC-00000160).

[1729] Thomases 5/2/96 GJ at 86-87, 94; Senate Whitewater Comm. Hearing, supra note 408, at 41-42 (Dec. 18, 1995) (testimony of S. Thomases).

[1730] Thomases 5/2/96 GJ at 96.

[1731] Id. at 102.

[1732] Senate Whitewater Comm. Hearing, supra note 408, at 30 (May 14, 1996) (testimony of S. Thomases).

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days in which I used to see them."[1733] Thomases also said she did not remember discussing the subject of Foster's note during this meeting with Hubbell and Mrs. Clinton.[1734]

Hubbell received a message from Mrs. Clinton at 2:30 p.m. on July 27 before he went to the White House.[1735] Hubbell said he did not remember seeing Thomases at the White House on July 27.[1736] Hubbell also said he first learned of Foster's writing on July 28, after the White House had disclosed the writing to Reno and Heymann.[1737] DOJ attorney David Margolis said he showed the note to Hubbell on the morning of July 28, and Hubbell "gasped when he saw it."[1738] The report recounted that Hubbell was very "shaken," and that "it was apparent to MARGOLIS that HUBBELL was previously unaware of the contents of the note."[1739]

Mrs. Clinton did not remember seeing Ms. Thomases on July 27.[1740] But when asked whether they discussed the note, she testified:

A. I don't believe I did.

Q. Do you remember ever -- do you remember talking with her about that at all that week?

A. I do not remember doing that.

[1733] Id.

[1734] Id. at 31

[1735] Hubbell's phone message slips (July 27, 1993) (Doc. No. 050-DC-00009633).

[1736] Hubbell 5/7/96 GJ at 11.

[1737] Id. at 6.

[1738] Margolis 2/8/95 Int. at 5.

[1739] Id.

[1740] H. Clinton 1/26/96 GJ at 101.

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Q. Do you remember talking with her at that time about the documents that were being transferred over to Williams & Connolly?

A. I don't believe I did that.

Q. And do you remember whether a conversation with Ms. Thomases at that time would have had anything to do with who should take over private legal work that Mr. Foster had been doing for you or your husband?

A. I don't think that was a subject of conversation. These documents were going to our private lawyers.[1741]

Barnett, Williams, and Thomases were all in the residence between about 3:20 p.m. and 4:30 p.m. Barnett arranged for an assistant from Williams & Connolly to pick up a box of documents from the closet in Room 323. Williams said Barnett was in the White House to visit Mrs. Clinton, and Williams just happened to see him.[1742] Williams said Barnett suggested he take the documents to Williams & Connolly.[1743] Williams said Barnett phoned an assistant from the law firm to move a box of documents to the firm and that she unlocked the closet for the assistant.[1744] Williams said Barnett and Mrs. Clinton conversed during the time it took the assistant to arrive and remove the box.[1745]

Before the Senate Whitewater Committee on December 11, 1995, Barnett said he went to the residence on July 27 for the specific purpose of picking up the Clinton personal

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[1741] Id. at 103.

[1742] M. Williams 10/28/94 Int. at 37 (sworn testimony); M. Williams 7/7/95 Senate Whitewater Comm. Depo. at 144-45.

[1743] M. Williams 6/2/95 GJ at 38; M. Williams 10/28/94 Int. at 37 (sworn testimony); M. Williams 7/7/95 Senate Whitewater Comm. Depo. at 145.

[1744] M. Williams 10/28/94 Int. at 38-39 (sworn testimony); M. Williams 7/7/95 Senate Whitewater Comm. Depo. at 145-47.

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documents.[1746] He said he arranged to pick up the documents when he spoke with Williams "at some point during that time of day . . . ."[1747]

In the Senate hearing, when asked if he spoke to the First Lady while he was there, Barnett testified that he had:

> [A]bsolutely no recollection of seeing the First Lady or speaking with the First Lady on that day. I cannot rule it out. It's 2-1/2 years later, but I have no recollection of seeing her on that day[.][1748]

At the same hearing, Maggie Williams reiterated that Barnett had a discussion with Mrs. Clinton.[1749] Mrs. Clinton said she did not remember seeing Barnett or Williams on July 27.[1750]

Capricia Marshall said she cleared Barnett into the White House on a day when he came to pick up a box, and per his request, Marshall brought him to Room 323 on the residence's third floor where he said he was to meet with Williams.[1751]

I. P. Barlow of Williams & Connolly testified before the Senate Whitewater Committee that he went to the White House to pick up a box on July 27.[1752] Records show he was in the

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[1745] M. Williams 7/7/95 Senate Whitewater Comm. Depo. at 146.

[1746] Senate Whitewater Comm. Hearing, supra note 408, at 11 (Dec. 11, 1995) (testimony of R. Barnett).

[1747] Id.

[1748] Id. at 12-13.

[1749] Senate Whitewater Comm. Hearing, supra note 408, at 13 (Dec. 11, 1995) (testimony of M. Williams).

[1750] H. Clinton 1/26/96 GJ at 103-04.

[1751] Marshall 1/25/96 GJ at 119-21.

[1752] Senate Whitewater Comm. Hearing, supra note 408, at 26-28 (Dec. 11, 1995) (testimony of I. Barlow).

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residence from 4:38 p.m. to 4:42 p.m.[1753] Barlow said he was escorted to the third floor, where he met Williams.[1754] This is when Barlow says that Williams opened a locked closet and showed him the box.[1755] Barlow testified the box was already taped when he removed it from the closet.[1756] Barlow then brought the box to Williams & Connolly.[1757]

3. Susan Thomases's Memory.

Thomases's health and memory have become relevant. On April 8, 1996, the Wall Street Journal reported that Thomases suffers from multiple sclerosis (MS), and that memory loss is a symptom of MS that afflicts 40-60 percent of those afflicted with MS.[1758] The article quoted Thomases as saying: "'I have experienced memory problems, and I have been told it is a common occurrence with MS, but I can't say my not remembering phone calls on that occasion was because of MS.'"[1759]

In a subsequent appearance before the grand jury, Thomases testified the quotation was accurate.[1760] She said she first began to notice memory problems in the late 1980s.[1761] About her

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[1753] Secret Service residential movement logs (July 27, 1993) (Doc. No. 336-DC-00000855).

[1754] Senate Whitewater Comm. Hearing, supra note 408, at 27 (Dec. 11, 1995) (testimony of I. Barlow).

[1755] Id. at 28.

[1756] Id. at 28, 37.

[1757] See Kendall & Barnett 5/6/94 Fiske Int. at 2.

[1758] Jill Abramson & Ellen Joan Pollock, 'Hillary's Enforcer': How Susan Thomases, Top Clinton Adviser, Fell Hard From Grace, Wall St. J., Apr. 8, 1996, at A1.

[1759] Id.

[1760] Thomases 5/2/96 GJ at 106.

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lack of memory on matters occurring in July 1993, she said:

A. But I'm still not willing to necessarily blame this on MS, because I do -- I do dozens of things every day, and sometimes I remember them very precisely, and sometimes I don't. And that's why when it's something that I'm supposed to remember, I am very careful about writing it down, so I will remember it.

And I just don't think it's realistic for anybody -- not just myself -- to expect to have a clear recollection of something weeks, months, years after the events, if one doesn't have some sort of notation or something to trigger the memory. And maybe it's because I'm -- you know, you can always kind of make up something that seems to fit with the day and the time and everything. But I'm just not willing to do that because my memory is something that I'm very, you know, careful about -- and certainly under oath.

. . . .

Q. But you right now can't give us a specific example of how your memory had been affected, beyond what a normal person's memory would be as to events or -

A. It's just -- it's a different -- it's a different kind of thing. It's like you go searching in the closet for something -- I mean, I'm talking about the memory closet -- and you think that it's there, but then, there's no there there.

I mean, it's just -- you know, I mean -- I don't want to give a lecture on MS, but MS is a disease that people feel affects the limbs and the eyes and other things, but in fact, it's a disease of the brain. And sometimes it just -- you know, it either -- I don't know how to explain this. Sometimes you go on a detour. Your mind will send you on a detour, and suddenly, at the end of the detour, there's no there there. And other times they'll send you on a detour, and you will get exactly where you wanted to go, only you realize that in order to get there, you've gone a rather convoluted route.

And it's just what I have learned to live with -- relatively successfully -- but it just takes a little extra work. And I just -- and I don't want to -- I

[1761] Id. at 107.

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> don't want to use it as an excuse. It's just part of my life now. I used to -- I used to rely exclusively on my memory, because I had a very good memory, and I just don't dare do that anymore. That's why I've had copious notes on a lot of things.[1762]

On May 3, 1996, the day after her appearance before the grand jury, Thomases's attorneys -- Benito Romano and Andy Levander -- further explained Thomases's medical condition. Romano said Thomases's memory problem was with retrieval.[1763] He said there was "a hole" on July 27, 1993[1764] that was consistent with memory problems associated with MS.[1765] When asked why Thomases could remember a private client matter on July 27 but not her visit to the White House, Romano said the client meeting on July 27 was a major event, because it led to a major presentation on July 28.[1766] The White House visit was probably just a routine visit among friends.[1767]

IV. ANALYSIS

This section sets forth the Independent Counsel's analysis about potential charges arising from the handling of papers and documents from Vincent Foster's office after his death. The Independent Counsel considered the potential charges of perjury (18 U.S.C § 1621), false statements (18 U.S.C. § 1001), and obstruction of justice (18 U.S.C. § 1505) for concealing

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[1762] Id. at 108-10.

[1763] Memo from SMC [Steve M. Colloton], Associate Independent Counsel, to File re: Susan Thomases (May 8, 1996).

[1764] Id.

[1765] Id.

[1766] Id.

[1767] Id.

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papers and documents from the lawful subpoenas of this Office and Congress.

The Independent Counsel has concluded the evidence was insufficient to prove beyond a reasonable doubt that any documents were removed from Foster's office with the intent to obstruct justice. Although there exists eyewitness testimony and additional circumstantial evidence that documents relevant to the Independent Counsel's investigation, as well as congressional inquiry, were removed, the Independent Counsel was unable to resolve the antecedent factual question of what papers or documents were contained in Vince Foster's office when he died. As there existed no complete index of the office's contents before his death or during the office's search, the Independent Counsel was unable to establish beyond a reasonable doubt that any documents were removed from Foster's office and withheld from this Office or from Congress.

A. Maggie Williams's Testimony about Her Removal of Documents from Foster's Office on the Night of His Death.

Secret Service Officer Henry O'Neill said he saw Williams leaving the Counsel's suite of offices on the night of Foster's death, carrying folders or files and taking them into her office, down the hall from the Counsel's suite. Additional testimony and evidence has established, however, that this eyewitness testimony was insufficient to prove beyond a reasonable doubt that Williams removed documents from Foster's office, thereby providing false statements to the Independent Counsel or Congress.

Williams said at some point during the evening of July 20, 1993, she got a copy of the press release about Foster's death and may also have obtained a copy of the First Lady's schedule

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for the following day. Williams was unable to remember whether she was carrying any documents with her when she entered Foster's office and still carrying them when she left the office.

Williams also submitted to an FBI polygraph examination in which she answered, in the negative, two questions about whether she removed any documents from Foster's office that evening or during the early morning hours after his death. The polygraph examiner concluded that Williams was truthful when responding to such questions, and an independent review by the FBI Laboratory confirmed these results.

Officer O'Neill was interviewed by Mr. Fiske's office six times, because of O'Neill's confusion about the two women's identities he saw with Williams around the Counsel's suite that night.[1768] He also expressed confusion during his Senate Deposition about whether Williams might have been carrying something in addition to what appeared to be folders or documents. He testified he could not remember whether Williams also was carrying a box on top of the folders. Further, he could not explain whether the folders or box came from Foster's office or whether Williams had these items with her when she entered the Counsel's suite.

Nussbaum, Thomasson and Williams each said no documents were removed from Foster's office on the evening of July 20. Nussbaum said while he and Thomasson were searching for a note in Foster's office, Williams was not searching for anything. Both Nussbaum and Thomasson said Williams was sitting on the couch in Foster's office crying. Although

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[1768] The two women whose identities O'Neill confused were Patsy Thomasson and Evelyn Lieberman.

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Nussbaum consistently testified that no one removed any documents from Foster's office, he equivocated about whether Williams was carrying any papers while she was in or around Foster's office.

Evelyn Lieberman said she sat at a desk in the First Lady's office on the night of July 20 after arriving at the White House with Williams. Lieberman said she did not see Williams carrying a box or a pile of papers or folders that evening, nor did she see Williams go into her office that evening.

Terri Cobey, a cleaning custodian on duty that night, remembered seeing a black female and a white female walking between the Counsel's office and the First Lady's office. She was unable to remember during an interview whether these women were carrying any papers or files with them. During an appearance before the grand jury, she said she did not see anyone carrying documents from Foster's office that night.

B. Bernard Nussbaum's Search of Foster's Office.

The Independent Counsel concluded that although the search of Foster's office had the effect of frustrating a legitimate law enforcement inquiry, the evidence was insufficient to prove beyond a reasonable doubt that Nussbaum intended to obstruct justice.

Two DOJ attorneys and an FBI agent testified that an agreement was reached with Nussbaum on July 21 whereby the DOJ attorneys would review at least a portion of each document in Foster's office to determine whether it was relevant to the investigation and whether it contained any privileged information. When everyone returned on July 22 to perform the search, Nussbaum said he alone would review the documents.

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From the time of the initial agreement on July 21 and the search on July 22, records showed numerous phone calls between Mrs. Clinton, Susan Thomases, and Maggie Williams, and calls between Thomases and Nussbaum. The pattern of telephone calls on the morning of July 22 raised questions about whether there was a relationship between the calls and the search. Mrs. Clinton, Thomases and Williams have each testified that they were consoling each other over the death of a close friend and that they did not remember discussing the search during these conversations.

Associate Counsel Steve Neuwirth testified about a conversation with Nussbaum before the office's search. Although Neuwirth could not remember the exact words used by Nussbaum, he testified that based on what Nussbaum had told him, it was Neuwirth's "impression" that Thomases had told Nussbaum that Mrs. Clinton was concerned about the search. Thomases did not remember having such a conversation with either Mrs. Clinton or Nussbaum. Thomases testified that Nussbaum brought up the topic of the search and described to her the procedure he planned on using. Although the evidence was inconclusive about whether Nussbaum spoke with Thomases before, after, or both before and after the search, Nussbaum testified that Thomases raised the subject with him and told him that people were concerned about the procedure to search Foster's office, but did not mention whether she had spoken with Mrs. Clinton. Mrs. Clinton testified that she did not remember expressing any concerns about the search with Thomases or Williams on the morning of July 22.

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C. Susan Thomases's Testimony to this Office and Congress about Her Discussions with Mrs. Clinton and Bernard Nussbaum about the Search.

Thomases testified that she did not express in any way to Nussbaum on the morning of July 22 the view that there should be a limitation placed on the ability of law enforcement officials to review documents in Foster's office. Although some evidence exists contradicting Thomases's testimony, the Independent Counsel concluded the evidence was insufficient to prove beyond a reasonable doubt that Thomases's testimony was knowingly false.

Telephone records establish a sequence of telephone calls on the early morning of July 22: Williams to Mrs. Clinton; Mrs. Clinton to Thomases; Thomases to Nussbaum; and Thomases to Mrs. Clinton. In particular, Thomases paged Nussbaum one minute after the completion of a three-minute call from the Rodham residence to Thomases's. Telephone records also show that five calls were placed from Thomases's law office to either the Office of the Chief of Staff or the First Lady's office between 10:00 a.m. and noon on July 22.

Mrs. Clinton, Williams, and Thomases each testified that during these telephone conversations, they were merely consoling each other over the death of a friend. None of them remembered discussing the search or any documents in Foster's office. Thomases testified that she did not believe that she spoke with Mrs. Clinton about the search before the office's search on July 22, 1993.

Nussbaum testified that Thomases raised the topic of Foster's office search during a telephone conversation on July 22. This testimony contradicts Thomases's assertion that Nussbaum raised the search during their conversation. Nussbaum testified that Thomases told

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him she had heard that people at the White House were discussing the search and were concerned about the procedure that Nussbaum planned to use. Additionally, Neuwirth testified that Nussbaum told him about a phone conversation with Thomases on the morning of July 22. Neuwirth testified that he was left with the impression that Thomases had told Nussbaum that Mrs. Clinton was concerned about investigators having unfettered access to documents in Foster's office. Nussbaum testified that Thomases did not discuss with him Mrs. Clinton's views about the search.

D. Maggie Williams's and Mrs. Clinton's Testimony about the Removal of the Clintons' Personal Documents from Foster's Office and Their Placement in the White House Residence.

Although some conflicting testimony exists about why the documents were put in the residence and whether the documents were reviewed by Maggie Williams or Mrs. Clinton, the Independent Counsel has concluded the evidence was insufficient to prove beyond a reasonable doubt the statements were false. Williams testified that she put the personal documents in the residence on July 22 at the request of Mrs. Clinton until they could be delivered to the law firm of Williams & Connolly. Williams also testified that she did not have Williams & Connolly pick up the documents that day because of the late hour. Both Williams and Mrs. Clinton have testified that they did not review those documents before Williams & Connolly removed them from the residence.

Williams also testified that she contacted Bill Barnett or his secretary twice on July 22 about the documents. Barnett's secretary, Sylvia Faison, testified that she was "positive" that she did not speak with Williams after Foster's death about picking up documents from the White

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House. Barnett's telephone logs do not show any calls to or from Williams on July 22. Barnett testified that his telephone logs are not perfect and he could not say whether he recorded every call he received.

Thomas Castleton, Special Assistant to the Counsel, was asked to carry the box of documents to the residence. He testified that on the way to the residence, he was told the Clintons would review the documents. Initially, he was unable to identify who told him that but limited the possibility to Betsy Pond, Linda Tripp, or Maggie Williams. In subsequent testimony, Castleton was able to identify Williams as the person who told him the documents were being brought to the residence for the First Lady to review, as they contained documents of a personal and financial nature. Williams disputed Castleton' s testimony that she told him the Clintons would be reviewing the documents. Williams was unable to remember whether Mrs. Clinton told her that she or the President wanted to personally review the files.

On July 25, 1993, Secret Service records show Mrs. Clinton remained in the residence the entire day and also show that Williams entered the residence for fourteen minutes. When questioned about this, Williams could not remember what she was doing in the residence, but responded that she was often there during the weekends. Mrs. Clinton testified that Williams did not show her any documents from Foster's office that weekend. She also testified that she did not review or see the documents from Foster's office that were stored in the residence before they were turned over to Barnett on July 27.

Although Williams testified that she did not review the documents once they were delivered to the residence, Nussbaum initially testified that Williams returned a file about the

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White House residence's renovation that was removed by Nussbaum and Williams on July 22. In subsequent testimony, Nussbaum said although Foster did work on the issue, he was not sure if the file even originated from Foster's office. Williams testified that she remembered having a discussion with Nussbaum about whether the renovation file was the Clintons' personal file, but did not remember returning the file to him.

The FBI Laboratory conducted fingerprint analysis on all documents that were identified by Williams & Connolly as those obtained from the White House on July 27. None of the prints matched those of President Clinton, Mrs. Clinton, or Williams.

E. The Clintons' Personal Documents Removed from Foster's Office and the Testimony of Mrs. Clinton, Maggie Williams, and Robert Barnett.

Gary Williams, the White House Plumbing Foreman, testified that on August 25, 1993, he saw a box with "VINCENT FOSTER" written on it in black magic marker in the closet in White House residence Room 323. This was the same closet where Maggie Williams stored the Clintons' personal documents from Foster's office. Gary Williams also testified that when he reentered the closet on November 2, 1993, he believed the same boxes were in the closet and remembered seeing Foster's name on a lid. This eyewitness testimony of the box's presence raises questions about the testimony of Mrs. Clinton, Maggie Williams, and Bob Barnett that the personal documents removed from Foster's office and stored in the White House residence were removed by the law firm of Williams & Connolly on July 27, 1993.

On May 28, 1996, this Office served a grand jury subpoena on the White House for any box and/or lid located in the residence bearing the name "Foster." The White House Counsel's

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office told this Office that a search of the residence and Carolyn Huber's East Wing office located no responsive materials. The Independent Counsel concluded the eyewitness testimony was insufficient to prove beyond a reasonable doubt that the testimony, standing alone, was false or that documents were secreted in the White House residence with the intent to obstruct justice.

F. Craig Livingstone's Testimony about His Activities on the Morning of July 21, 1993.

Craig Livingstone testified that on the morning of July 21, 1993, he was at the Foster residence to control the press. Livingstone also testified that he did not remove or carry documents out of Foster's office that morning. Other evidence, including an eyewitness account, contradicts Livingstone's testimony about his whereabouts and activities on July 21. The Independent Counsel concluded that such evidence was inconclusive and thus there was insufficient evidence to prove beyond a reasonable doubt that Livingstone provided false testimony to this Office.

Officer Bruce Abbott of the Uniformed Division of the Secret Service, testified that on the morning of July 21, 1993, while assigned to work the 6:30 a.m. to 3:00 p.m. shift at Post E-1, located on the ground floor entrance to the West Wing, he saw Craig Livingstone and another man get off the elevator near his post. Abbott was unable to identify the time that he saw these two men; initially he said it was between 6:45-7:00 a.m., then subsequently said it might have been as late as 8:30 a.m. Abbott also testified that Livingstone was carrying a briefcase and the other man was carrying a cardboard box with the top open, containing several dark-colored loose-leaf binders. The men walked past him and out the door of the West Wing.

Abbott reported his observations later that morning to Secret Service Inspector Dennis

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Martin and Park Police Detective Peter Markland. Detective Markland questioned Livingstone later on July 21. Livingstone denied being in Foster 's office that morning or carrying documents from Foster's office. Markland testified that Livingstone did not appear surprised or concerned by the questioning.

On July 21, Livingstone had prepared a typewritten report of his activities on July 20-21 to answer press inquiries. This report is consistent with his testimony that he was at the Foster residence that morning until 8:00 a.m. Gate records show that Livingstone entered the White House at 8:06 a.m. on July 21. Livingstone denied that he was in the White House before 8:06 a.m. Although Livingstone has said he went to the Counsel's suite shortly after he arrived at the White House, he maintained that he could not remember carrying a briefcase or moving any documents from the Counsel's suite or Foster's office on the morning of July 21.

Abbott's testimony does not establish conclusively where Livingstone was in the West Wing before Abbott allegedly saw him, or where he went after Abbott allegedly saw him. Further, Abbott was unable to identify the other individual he saw on the elevator with Livingstone. It cannot be determined whether this individual and Livingstone were engaged in a joint task or just happened to be on the elevator with Livingstone. Finally, Abbot cannot establish the documents' contents in Livingstone's briefcase or the box carried by the unidentified man, or whether any such documents were in Foster's office when he died.

The Independent Counsel also evaluated the testimony of Charles Easley, the security officer for the Executive Office of the President, which also contradicted Livingstone's testimony. Easley testified that several months after Foster's death, Livingstone asked Easley if

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he told him that he took documents from Foster's office. Easley responded in the negative. Easley said Livingstone then questioned whether the Secret Service or the Park Police had turned him in for removing a box from Foster's office. Easley questioned whether any of this ever happened, as Livingstone was prone to brag to others in an effort to enhance his own importance.

V. SUMMARY CONCLUSIONS

The events following Vince Foster's death could be determined with only limited certainty. Although there were numerous logs and telephone records that showed times of calls and the entry and exit from the White House, many people involved said they were unable to remember what was said or done, or the reasons for calls or meetings. Broadly speaking, the Independent Counsel's investigation as it related to the documents in Foster's Office involved two separate questions. First, whether anyone obstructed the investigation of the U.S. Park Police and the FBI by removing or concealing relevant documents from Foster's office. Second, whether, in the subsequent investigations, anyone committed perjury, made false statements, or obstructed justice. The Independent Counsel found there was insufficient evidence to show beyond a reasonable doubt that anyone had committed a federal crime.

The Independent Counsel extensively investigated whether anyone obstructed the FBI and Park Police investigations by tampering with documents in Foster's office. During the Independent Counsel's investigation, numerous people were interviewed or appeared before the grand jury, which also issued numerous subpoenas to obtain relevant evidence. Both circumstantial evidence (principally phone records and entry and exit logs) and testimonial evidence exist to create the inference that some people might have endeavored to tamper with

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documents in Foster's office, or counseled others to do so. All people involved in those conversations denied such actions.

Additionally, without any direct evidence -- in particular, without testimony from anyone who claimed to have participated in any endeavor to obstruct the federal investigations -- there was simply insufficient evidence or proof of any kind showing anyone committed perjury, made false statements or obstructed the due administration of justice by refusing to provide relevant records.

Accordingly, no criminal prosecutions about this aspect of the Independent Counsel's investigation will be brought. This matter is now closed.

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PART C

APPENDIX 1

PLEA AGREEMENT, UNITED STATES v. WEBSTER LEE HUBBELL,
CASE NO. LR-CR-94-241
(DEC. 6, 1994)

and

PLEA AGREEMENT AND PLEA ALLOCUTION,
UNITED STATES v. WEBSTER L. HUBBELL
CASE NOS. 98-0394, 98-0151
(JUNE 30, 1999)

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IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
WESTERN DIVISION

UNITED STATES OF AMERICA	)	
	)	
	)	
V.	)	No. LR-CR-94-241
	)	
	)	
	)	
WEBSTER LEE HUBBELL	)	

PLEA AGREEMENT

This Plea Agreement between the Independent Counsel, KENNETH W. STARR, and the Defendant, WEBSTER LEE HUBBELL, and his attorney, John W. Nields, Jr., is made pursuant to Rule 11(e)(B) of the Federal Rules of Criminal Procedure.

This Plea Agreement is entirely voluntary and represents the entire agreement between the Independent Counsel and the Defendant regarding Defendant's criminal liability in case No. LR-CR-94-241.

This Plea Agreement finally resolves all of Defendant's criminal liability involving his billing and expense practices while a member of the Rose Law Firm as set forth in the Information, and nothing herein shall limit or in any way waive or release any administrative or judicial civil claim, demand or cause of action, whatsoever, of the United States or its agencies relating to the conduct of the Defendant set forth in the Information in this case. Moreover, this Agreement is limited to the Independent Counsel, Kenneth W. Starr, and cannot bind other federal, state, or local prosecuting, administrative, or

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regulatory authorities except as expressly set forth in this Agreement.

By this Plea Agreement, KENNETH W. STARR, Independent Counsel, and the Defendant, WEBSTER LEE HUBBELL, and his attorney, John W. Nields, Jr., agree upon the following:

1. Defendant WEBSTER LEE HUBBELL agrees to waive in open court prosecution by Indictment and consents that the proceeding may be by Information instead of by Indictment.

Defendant acknowledges that he has been charged in the Information in this case with Mail Fraud, in violation of Title 18, United States Code, Section 1341, and with Tax Evasion, in violation of Title 26, United States Code, Section 7201.

2. Defendant has read the charges against him contained in the Information and those charges have been fully explained to him by his attorney.

3. Defendant fully understands the nature and elements of the crimes with which he has been charged.

4. Defendant will enter voluntary pleas of guilty to Counts One and Two of the Information in this case.

5. Defendant will plead guilty because he is in fact guilty of the charges contained in Counts One and Two of the Information. In pleading guilty, Defendant admits that he did, in fact, devise a scheme to defraud as described in Count One of the Information. Defendant admits that he did, in fact, attempt to evade and defeat his income tax as set forth in Count Two of the Information.

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6. For purposes of applying the Guidelines promulgated by the United States Sentencing Commission pursuant to Title 28, United States Code, Section 994, the parties agree on the propositions set forth in Paragraphs 7 through 11 below.

7. (a) Pursuant to Sentencing Guideline 2F1.1(a) and 2F1.1(b)(1), and the fact that the amount of the fraud committed by the Defendant between 1989 and 1992, as charged in Count One of the Information, is at least $394,000.00, the base offense level for the offense set forth in Count One is at least level 15. The parties agree to present their final calculations as to the exact dollar amount of the fraud prior to sentencing.

(b) Pursuant to Sentencing Guideline 2F1.1(b)(2), and the fact that the offense charged in Count One of the Information involved (A) more than minimal planning, and (B) a scheme to defraud more than one victim, an upward increase of 2 levels is appropriate.

(c) Pursuant to Sentencing Guideline 3B1.3, and the fact that the Defendant abused a position of trust, and used a special skill (he being a lawyer) in a manner that significantly facilitated the commission and concealment of the offense, as set forth in Count One of the Information, an additional upward increase of 2 levels is appropriate.

8. (a) Pursuant to the Sentencing Guidelines 2T1.1(a) and 2T4.1, and the fact that the Defendant's unreported income for the years 1989 through 1992 is at least $394,000.00, and the tax loss pertaining to all of Defendant's relevant criminal conduct

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in violation of the tax laws (for the years 1989 through 1992) is more than $120,000.00, the base offense level for the tax offense set forth in Count Two is level 15.

(b) Pursuant to Sentencing Guideline 2T1.3(b)(1), and the fact that the Defendant failed to report income exceeding $10,000.00 from criminal activity in 1992, the base offense level for the offense set forth in Count Two is to receive an upward adjustment of 2 levels.

9. Defendant has demonstrated a recognition of affirmative acceptance of personal responsibility for his criminal conduct. If the Independent Counsel does not receive additional evidence in conflict with this provision, and if the Defendant continues to accept full responsibility for his actions, within the meaning of Sentencing Guideline 3E1.1, a three-level reduction in the offense level is appropriate.

10. Based on the facts known to the government as of the date of this Agreement and stipulated in subparagraphs above, the Defendant's criminal history points equal 0 and the Defendant's criminal history category is I; and

11. Defendant and his attorney and the Independent Counsel acknowledge that the above calculations are preliminary in nature and based on facts known to the government as of the time of this Agreement. In the case of the amount listed in subparagraphs 7 and 8 above, the figure indicated is a minimum figure, and is not intended to be a final calculation. The Defendant understands that the Probation Office will conduct its own investigation and

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that the Court ultimately determines the facts and law relevant to sentencing, and that the Court's determinations govern the final Sentencing Guidelines calculation. Accordingly, the validity of this Agreement is not contingent upon the Probation Office's or the Court's concurrence with the above calculations.

12. Errors in calculations or interpretation of any of the guidelines may be corrected or amended by either party prior to sentencing. The parties may correct these errors or misinterpretations either by stipulation or by a statement to the Probation Office and/or Court setting forth the disagreement as to the correct guidelines and their application. The validity of this Agreement will not be affected by such corrections or amendments, and the Defendant shall not have a right to withdraw his plea on the basis of such corrections or amendments.

13. Defendant understands that Count One of the Information to which he will plead guilty carries a maximum penalty of five years imprisonment; a maximum fine of $250,000.00 [18 USC 3571(b)(3)]; or an alternative fine based on gain or loss [18 USC 3571(d)]; and any restitution ordered by the Court.

14. Defendant understands that Count Two of the Information to which he will plead guilty carries a maximum penalty of five years imprisonment, a maximum fine of $250,000.00 [18 USC 3571(b)(3)], together with the costs of the prosecution, and any restitution ordered by the Court.

15. Defendant understands that in accordance with the federal law, Title 18, United States Code, Section 3013, upon

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entry of judgment of conviction, the Defendant will be assessed $50.00 on each count to which he has pled guilty, in addition to any other penalty imposed.

16. Defendant agrees to cooperate by providing full, complete, accurate and truthful information concerning matters under investigation by the Office of the Independent Counsel. If, in the judgment of the Independent Counsel, the Defendant has provided substantial assistance in an investigation or prosecution, within the meaning of Section 5K1.1 of the Sentencing Guidelines, the Independent Counsel will move pursuant to Section 5K1.1 for a downward departure.

Defendant has the right to seek a downward departure on grounds other than that set forth in paragraph 16 above, and the Independent Counsel is free to take whatever position it deems appropriate with respect thereto.

17. Nothing in this Agreement shall limit the Internal Revenue Service in its collection of any taxes, interest or penalties from the Defendant.

18. Defendant agrees to file accurate amended income tax returns, Form 1040X, with the Internal Revenue Service for the calendar years 1989 through 1992.

19. Defendant understands that the Independent Counsel will fully apprise the District Court and the United States Probation Office of the nature, scope and extent of Defendant's conduct regarding the charges against him, and related conduct relevant

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to and including all matters in aggravation or mitigation on the issue of sentencing.

20. It is understood by the parties that the sentencing Judge is neither a party to nor bound by this Agreement and is free to impose the maximum penalties as set forth in paragraphs 13 and 14 above.

21. The Independent Counsel agrees that the Defendant should be released on his own recognizance pending sentence.

22. Defendant may request designation to a particular facility, and the Independent Counsel agrees to take no position with respect to such designation.

23. The Independent Counsel agrees that the Defendant should be permitted to self-surrender to the facility to which he is designated.

24. Should the Judge refuse to accept the Defendant's plea of guilty to Counts One and Two of the Information, this Agreement shall become null and void and neither party will be bound thereto.

25. Defendant acknowledges that he has read this Agreement and carefully reviewed each provision with his attorney. Defendant further acknowledges that he understands and

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voluntarily accepts each and every term and condition of this Agreement.

AGREED THIS DATE: December 6, 1994

Kenneth W. Starr
Independent Counsel

Webster Lee Hubbell
Defendant

W. Hickman Ewing, Jr.
Senior Counsel

John W. Nields, Jr.
Attorney for Defendant

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA	)	
	)	
v.	)	CRIM. NOS. 98-0394 (JR)
	)	98-0151 (JR)
	)	
WEBSTER L. HUBBELL,	)	
	)	
Defendant.	)	

FILED
JUN 30 1999
NANCY MAYER WHITTINGTON, CLERK
U.S. DISTRICT COURT

PLEA AGREEMENT

The United States, by and through the Office of the Independent Counsel, and Defendant Webster L. Hubbell, by and through the undersigned counsel, pursuant to Rule 11(e)(1)(C) of the Federal Rules of Criminal Procedure, have entered into this plea agreement ("Agreement"). If the Court refuses to accept this Agreement and the Defendant's guilty pleas as set forth below, this Agreement and his guilty pleas shall become null and void and neither party will be bound thereby. The terms and conditions of this Agreement are as follows:

1. Defendant Webster L. Hubbell agrees to plead guilty to Count 1 in United States v. Webster L. Hubbell, Cr. No. 98-0394, D.D.C.; and agrees to plead guilty to a one count Superseding Criminal Information in United States v. Webster L. Hubbell, Cr. No. 98-0151, D.D.C., filed with this Agreement, subject to the conditions set forth in paragraph 5 below.

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2. Count 1 in Cr. No. 98-0394, a felony, charges Defendant Hubbell with concealing by scheme material facts from the Federal Deposit Insurance Corporation (FDIC) and the Resolution Trust Corporation (RTC), in violation of 18 U.S.C. § 1001. Defendant agrees to withdraw his previous plea of not guilty and to enter a plea of guilty with respect to Count 1 only of Indictment Cr. No. 98-0394. The parties understand that the Defendant will admit that during the pendency of the *Frost* case, he knowingly failed to disclose to the FDIC and RTC by scheme a material fact which Defendant had a duty to disclose, namely, that during the pendency of the *Frost* case, the Rose Law Firm represented Precision Industries, a company whose president and part owner, Jimmie D. Alford, was a defendant in the *Frost* case, as alleged in Paragraph 69(1) of Indictment Cr. No. 98-0394. The parties further understand that, had this case proceeded to trial, the Government was prepared to introduce evidence on Count 1 beyond that described in Paragraph 69(1) of the Indictment. The maximum penalty for this offense is a term of five years of imprisonment, a fine of $250,000, or an alternative fine based on gain or loss, any restitution ordered by the Court, a mandatory special assessment, and a three year period of supervised release.

3. The Superseding Criminal Information charges Defendant Hubbell with a misdemeanor for willful failure to pay a tax, in violation of 26 U.S.C. § 7203. Subject to the conditions in

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paragraph 5 below, Defendant agrees to enter a plea of guilty on Count 1 of the Superseding Criminal Information on the ground that he willfully failed to pay a portion of the tax due and owing. The maximum penalty for this offense is one year of imprisonment, a fine of $100,000, or an alternative fine based on gain or loss, any restitution ordered by the Court, a mandatory special assessment, the costs of prosecution, and a one year period of supervised release.

4. The Court may, pursuant to § 5E1.2 of the Sentencing Guidelines and Policy Statements, order the Defendant to pay a fine sufficient to reimburse the government for the costs of probation, if any is ordered.

5. In exchange for Defendant Hubbell's pleas of guilty to Count 1 of Indictment Cr. No. 98-0394 and Count 1 of the Superseding Criminal Information Cr. No. 98-0151, the United States agrees that it:

(a) will dismiss with prejudice the remaining counts of Indictment Cr. No. 98-0394 at the time of sentencing;

(b) will dismiss with prejudice, at the time of Defendant Hubbell's sentencing, the Indictment in Cr. No. 98-0151, D.D.C., as to Defendants Suzanna W. Hubbell, Michael C. Schaufele and Charles Owen;

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(c) will not further criminally prosecute or investigate the Defendant, nor refer the Defendant to the Department of Justice for prosecution or investigation of any offenses arising out of the Independent Counsel's investigations; and

(d) intends to petition the Supreme Court for a writ of certiorari in United States v. Webster L. Hubbell, et al., No. 99-3044, concerning the Court of Appeals' decision with regard to act of production immunity. If certiorari is not sought or is denied, the United States agrees to move to vacate Defendant Hubbell's judgment of conviction on the Superseding Criminal Information and agrees to dismiss with prejudice the Indictment and the Superseding Criminal Information in Cr. No. 98-0151 against Defendant Hubbell. If certiorari is granted and the Supreme Court resolves the case in a manner such that it fails materially to improve the United States' position to the point that it is reasonably likely that Defendant Hubbell's act of production immunity does not pose a significant bar to his prosecution, the United States will move to vacate Defendant Hubbell's judgment of conviction on the Superseding Criminal Information and will move to dismiss with prejudice the Indictment and the Superseding Criminal Information in Cr. No. 98-0151 against Defendant Hubbell.

If certiorari is granted and the Supreme Court resolves the case in a manner that materially improves the United States' position to the point that it is reasonably likely that Defendant

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Hubbell's act of production immunity does not pose a significant bar to his prosecution, then the United States will not move to vacate Defendant Hubbell's judgment of conviction under the Superseding Criminal Information. The United States will, however, then move to dismiss with prejudice the Indictment in Cr. No. 98-0151 against Defendant Hubbell.

6. Pursuant to Fed. R. Crim. P. 11(e)(1)(C), the United States and the Defendant agree that the Defendant's sentence will not include incarceration.

7. The parties further recommend that the Court make the finding required by Sentencing Guidelines § 6B1.2(a) that the Court is satisfied either that the agreed sentence is within the applicable Guideline range or departs from the applicable range for justifiable reasons. Pursuant to Sentencing Guidelines § 6B1.2(c) and Fed. R. Crim. P. 11(e)(1)(C), this Agreement includes specific sentences calculated as follows:

I. Count 1, Indictment Cr. No. 98-0394:

A. Offense Level

1. Base offense level 6, pursuant to Guidelines § 2F1.1(a);

2. No upward adjustment for loss, pursuant to Guidelines § 2F1.1(b)(1);

3. To the extent that a 2 level upward adjustment for more than minimal

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planning is warranted pursuant to Guidelines § 2F1.1(b)(2)(A), it is offset by the downward departure based on factors not adequately taken into account by the Sentencing Guidelines as set forth in subparagraph 7 below;

4. No adjustment because the offense did not substantially jeopardize the safety and soundness of a financial institution, pursuant to Guidelines § 2F1.1(b)(7)(A);

5. No adjustment for obstruction of justice or abuse of position of trust because such factors did not significantly facilitate the commission or concealment of the instant offense, pursuant to Guidelines §§ 3C1.1 and 3B1.3, respectively;

6. A 2 level downward adjustment for acceptance of responsibility upon execution of this Agreement and entry of the guilty plea pursuant to Guidelines § 3E1.1(a); and

7. An additional 2 level downward departure, pursuant to Guidelines § 5K2.0, based on factors not adequately taken into account by the Sentencing Guidelines, namely, Defendant's agreement to plead guilty more than a month before trial; the resolution of two complex cases in lieu of trial, thereby permitting the government and the Court to allocate their resources to other matters; and the strong governmental and public interest in concluding matters as expeditiously as possible.

The parties agree that no further downward or upward departure from that set forth above is warranted. The adjusted offense level is therefore no higher than 4.

B. Criminal History Category and Sentencing Range

Based upon the calculations set forth above and the Defendant's Criminal History Category, the sentencing range

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is 0-6 months. Pursuant to Fed. R. Crim. P. 11(e)(1)(C), the specific sentence agreed to by the parties is a term of 1 year of probation, with no special conditions of confinement, to commence upon sentencing, no restitution, no fine, and a special assessment of $100. The parties agree that no restitution is appropriate because there was no loss to the Government as a result of the offense. The parties also agree that no fine is appropriate on this Count for the reasons set forth in paragraph 8 below.

II. Count 1, Superseding Criminal Information, Cr. No. 98-0151.

A. Offense Level

1. The parties agree that within the period covered by the Superseding Criminal Information, the Defendant had a duly assessed tax liability due and owing to the Internal Revenue Service in excess of $500,000;

2. The parties also agree that after the time of Defendant's sentencing (June 1995) in United States v. Webster L. Hubbell, No. LR-CR-94-241 (E.D. Ark.) ("Hubbell I") his debts, including his tax liabilities from Hubbell I, substantially exceeded his assets, and that subsequent to Defendant Hubbell's sentencing in Hubbell I, the Defendant was unable to pay the full amount due and owing. Accordingly, the amount the Defendant willfully failed to pay is a figure lower than the assessed amount due;

3. The parties agree that the amount the Defendant willfully failed to pay is difficult to ascertain with certainty and is to some degree subjective. In addition, it is unclear to what extent the Court in Hubbell I included some portion of that underlying tax liability for sentencing purposes. The parties agree, however, that the combination of an adjustment for acceptance of responsibility and a downward departure on the ground described in subparagraph 4 below yields an offense level of no higher than 4;

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4. The parties agree that a downward departure pursuant to Guidelines § 5K2.0 is warranted in this case based on factors not adequately taken into account by the Sentencing Guidelines, namely, the unusual circumstances of these two cases, including the following:

(a) The Court of Appeals' decision in No. 99-3044 concerning act of production immunity creates considerable uncertainty whether, based on the legal standards announced by the Court of Appeals, the United States would prevail in further proceedings in the District Court on Defendant's Motion to Dismiss;

(b) The resolution of two complex cases in lieu of trial, thereby permitting the government and the Court to allocate their resources to other matters; and the strong governmental and public interest in concluding matters as expeditiously as possible; and

5. The parties also agree that no adjustment for grouping is appropriate with respect to this plea and that no further downward or upward departure from that set forth above is warranted. The adjusted offense level is therefore no higher than 4.

B. Criminal History Category and Sentencing Range

Based upon the calculations set forth above and the Defendant's Criminal History Category, the sentencing range is 0-6 months. The specific sentence, agreed to by the parties, pursuant to Fed. R. Crim. P. 11(e)(1)(C), is a term of 1 year of probation with no special conditions of confinement, to commence upon sentencing, no restitution, no fine, and a special assessment of $25. The parties agree that no fine or restitution

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is appropriate on this Count for the reasons set forth in paragraph 8 below.

8. The parties agree that no fine is appropriate in view of the fact that the Internal Revenue Service asserts taxes, penalties and interest owing from the Defendant in excess of $761,123.15, and that the Defendant has substantial other debts and no substantial assets or substantial source of income. The Defendant agrees to use his best efforts to work with the Internal Revenue Service in a cooperative fashion to make reasonable payments toward his tax liability given the financial resources available to him.

Prior to sentencing, Defendant Hubbell agrees to pay $125 in special assessments.

9. Pursuant to Guidelines § 6A1.1, the parties jointly recommend that the Court direct that no Presentence Investigation and Report be made and that the Court proceed to sentencing immediately upon the entry of the guilty pleas. Defendant and the United States recommend that the Court make a finding pursuant to Fed. R. Crim. P. 32(b)(1)(A)&(B) that in light of the Presentence Report from Hubbell I, the length of the investigation in these matters, the previous proceedings before this Court between Defendant and the United States, the factual record developed in the preliminary proceedings and motions in these matters, and in the interests of all parties and judicial economy and finality, the Court has information sufficient to

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exercise its sentencing authority meaningfully without a Presentence Investigation and Report. However, should the sentencing judge defer the decision whether to accept or reject this Agreement, pursuant to Fed. R. Crim. P. 11(e)(2), until after there has been an opportunity to consider a Presentence Investigation and Report, nothing in this Agreement limits the rights of the parties to answer any inquiries from the United States Probation Office or the Court.

Nothing herein shall limit or in any way waive or release any civil claim, demand or cause of action, whatsoever, of the United States or its agencies relating to the conduct of the Defendant in this case. This Agreement is limited to matters within the jurisdiction of the Independent Counsel, and cannot bind other federal, state, or local prosecuting, administrative, or regulatory authorities except as to the matters set forth in this Agreement.

Nothing in this Agreement shall limit the Internal Revenue Service, as provided by law, in its assessment and collection of said taxes, interest, or penalties from the Defendant.

10. The parties acknowledge and agree, pursuant to Fed. R. Crim. P. 11(e)(4), that if the Court rejects this Agreement, the Court shall, on the record, inform the parties of this fact, advise the Defendant personally in open court, or, on a showing of good cause, in camera, that the Court is not bound by the Agreement, afford the Defendant the opportunity then to withdraw

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the pleas, and advise the Defendant that if the Defendant persists in his guilty pleas the disposition of the case may be less favorable to the Defendant than that contemplated by this Agreement. Nothing in this Agreement waives the Defendant's rights under Fed. R. Crim. P. 11(e)(6) or Fed. R. Evid. 410.

11. With respect to the Defendant's post-incarceration period of supervision arising from United States v. Webster Lee Hubbell, No. LR-CR-94-241 (E.D. Ark.), the United States agrees that the offenses charged in Count 1 of Indictment Cr. No. 98-0394 and Superseding Criminal Information Cr. No. 98-0151 occurred prior to that supervision. In the event a violation proceeding is commenced by the United States Probation Office on the basis of these guilty pleas, the United States will recommend to the Court that such supervision be restored with no additional sanction.

12. This written agreement constitutes the complete agreement between the United States and the Defendant. The United States has made no promises or representations except as set forth in writing in this Agreement. The Defendant acknowledges that no threats have been made against the Defendant and that the Defendant is pleading guilty freely and voluntarily because the Defendant is guilty. Any modification of this Agreement shall be valid only as set forth in writing in a supplemental or revised plea agreement signed by all parties.

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13. Defendant's Signature: I hereby agree that I have consulted with my attorney and fully understand all rights with respect to the pending matters. Further, I fully understand all rights with respect to the provisions of the Sentencing Guidelines and Policy Statements which may apply in my case. I have read this Agreement and carefully reviewed every part of it with my attorney. I understand this Agreement and I voluntarily agree to it.

Date: June 25, 1999

WEBSTER L. HUBBELL
Defendant

14. Defense Counsel Signature: I am counsel for the Defendant in this case. I have fully explained to the Defendant the Defendant's rights with respect to the pending matters. Further, I have reviewed the provision of the Sentencing Guidelines and Policy Statements and I have fully explained to the Defendant the provisions of those Guidelines which may apply in this case. I have carefully reviewed every part of this plea agreement with the Defendant. To my knowledge, the Defendant's decision to enter into this Agreement is an informed and voluntary one.

Date: June 25, 1999

JOHN W. NIELDS, JR.
Counsel for Defendant

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This Agreement executed on this 25th day of June, 1999.

Respectfully submitted,

KENNETH W. STARR
Independent Counsel

Robert W. Ray
Senior Litigation Counsel

David G. Barger
Associate Independent Counsel

AGREED AND CONSENTED TO:

Date: June 25, 1999

WEBSTER L. HUBBELL
Defendant

Date: June 25, 1999

JOHN W. NIELDS, JR., ESQ.
Counsel for Defendant

Date: June 25, 1999

PETER J. ROMATOWSKI, ESQ.
Counsel for Defendant

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PLEA ALLOCUTION TO COUNT ONE — 98-0394

A. Charge:

COUNT 1
[COVER UP BY SCHEME]
[18 U.S.C. § 1001]

Count One charges that from in or about March 1989 until on or about December 27, 1995, in the District of Columbia, Defendant

WEBSTER L. HUBBELL,

in a matter within the jurisdiction of the FDIC and the RTC, did knowingly and willfully conceal and cover up by scheme material facts about and related to the true nature of Defendant WEBSTER L. HUBBELL's, the Rose Law Firm's, and the 1985-1986 billing partner's relationships to and with Seth Ward, Madison Guaranty, Madison Financial, and the Castle Grande transaction.

In violation of Title 18, United States Code, Section 1001.

B. Proof at trial:

The Government would expect to prove at trial, in pertinent part, and as relevant to this plea, that Defendant Hubbell in a matter within the jurisdiction of the FDIC and RTC, knowingly concealed by scheme material facts related to the true nature of Defendant's relationship with Madison Guaranty, as set forth in Count One of the Indictment.

C. Defendant's allocution:

Pursuant to the terms of the Plea Agreement, Defendant will admit that, during the pendency of the *Frost* case, he knowingly failed to disclose to the FDIC and RTC by scheme a material fact which he had a duty to disclose. The evidence would show, and defendant will admit, that during the litigation of the *Frost* case, he learned that the Rose Law Firm represented a company called Precision Industries, and that Jimmie D. Alford, a defendant in the *Frost* case, was the president and a part owner of Precision Industries. The proof would further show that Defendant Hubbell believed that this fact would have been material to the FDIC in deciding whether to continue the Rose Law Firm as counsel to Madison Guaranty in the *Frost* case. Finally, the evidence would demonstrate that Mr. Hubbell knew he should have disclosed this fact to the FDIC, and knowingly failed to do so.

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PART C

APPENDIX 2

CLIENTS AND CLIENT-GENERATED INCOME FOR WEBSTER L. HUBBELL (1994-1995)

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Webster L. Hubbell

Income from Consulting and Book Income

1994-1995

Listed By Client

Check Date	Deposit Date	Deposited to Account No.	Amount	Payor	Endorsment	Check No.	Bates. No.
05/23/94	06/02/94	392	$3,000.00	**American Income Life**	Webb Hubbell	1600803450	2144-00000009
06/12/94	06/21/94	392	$3,000.00	**American Income Life**	W. Hubbell	1600820620	2144-00000010
07/10/94	07/22/94	392	$3,000.00	**American Income Life**	W. Hubbell	1600850122	2144-00000011
08/10/94	08/17/94	392	$3,000.00	**American Income Life**	Deposit Only	1600888122	2144-00000012
09/11/94	09/20/94	392	$3,000.00	**American Income Life**	W. Hubbell	1600917118	2144-00000014
10/10/94	10/20/94	392	$3,000.00	**American Income Life**	W. Hubbell	1600949193	2144-00000013
		Total	**$18,000.00**	**Reported $36,000 in 1994**			
07/28/94	7/29/94	392	$18,000.00	**C.W. Conn, Jr.**	W. Hubbell	1024	2145-00000004
		Total	**$18,000.00**	**Not Reported in 1994**			
04/25/94	04/26/94	392	$15,000.00	**Consumer Support and Education Fund**	W. Hubbell	1041	2122-00000060
05/18/94	05/23/94	392	$15,000.00	**Consumer Support and Education Fund**	Webster Hubbell	1046	2122-00000063
06/18/94	06/27/94	392	$15,000.00	**Consumer Support and Education Fund**	W. Hubbell	1050	2122-00000066
		Total	**$45,000.00**	**Reported $45,000 in 1994**			
10/25/94	10/27/94	392	$5,000.00	**Entrecorp**	Deposit Only	1523	2073-00000397
		Total	**$5,000.00**	**Not Reported in 1994**			
06/27/94	06/27/94	392	$99,985.00	**Hong Kong China**	Wire Transfer		2073-00000702
		Total	**$99,985.00**	**Reported $100,000 in 1994**			
07/20/94	07/21/94	392	$18,000.00	**John or Rebecca Moores**	W. Hubbell	25140	LG00000004
		Total	**$18,000.00**	**Not Reported in 1994**			
10/09/94	10/12/94	392	$18,000.00	**Lillyan S. Lindemann**	Webb Hubbell	1942	2160-00000028
		Total	**$18,000.00**	**Not Reported in 1994**			
07/11/94	07/18/94	392	$10,000.00	**Mid-America Dairymen, Inc.**	W. Hubbell	5249653	2148-00000039
09/06/94	09/15/94	392	$5,000.00	**Mid-America Dairymen, Inc.**	W. Hubbell	5258969	2148-00000044
10/31/94	11/02/94	392	$5,000.00	**Mid-America Dairymen, Inc.**	W. Hubbell	6883275	2148-00000048
12/05/94	12/08/94	392	$5,000.00	**Mid-America Dairymen, Inc.**	Deposit Only	6906518	2148-00000052
		Total	**$25,000.00**	**Reported $10,000 in 1994**			

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Check Date	Deposit Date	Deposited to Account No.	Amount	Payor	Endorsment	Check No.	Bates. No.
08/29/94	09/06/94	392	$18,000.00	**Nicholas Stonnington**	W. Hubbell	310	2156-00000030
		Total	**$18,000.00**	**Not Reported in 1994**			
08/09/94	08/11/94	392	$10,000.00	**Pacific Telesis**	Deposit Only	27903	2149-00000044
09/13/94	09/15/94	392	$10,000.00	**Pacific Telesis**	W. Hubbell	28120	2149-00000048
10/04/94	10/07/94	392	$10,000.00	**Pacific Telesis**	W. Hubbell	28284	2149-00000052
11/01/94	11/03/94	392	$10,000.00	**Pacific Telesis**	W. Hubbell	28445	2149-00000057
12/06/94	12/08/94	392	$5,000.00	**Pacific Telesis**	Deposit Only	28651	2149-00000062
		Total	**$45,000.00**	**Reported $45,000 in 1994**			
04/28/94	05/03/94	392	$25,000.00	**Revlon**	Webb Hubbell	30574	2151-00000003
07/22/94	07/22/94	392	$25,000.00	**Revlon**	W. Hubbell	36150	2151-00000008
12/12/94	12/15/94	392	$12,775.00	**Revlon**	W. Hubbell	38248	2151-00000013
		Total	**$62,775.00**	**Reported $62,775 in 1994**			
06/20/94	06/27/94	392	$5,000.00	**SunAmerica**	W. Hubbell	1074782	2073-00000345
07/11/94	07/20/94	392	$5,000.00	**SunAmerica**	W. Hubbell	1090241	2073-00000351
08/10/94	08/16/94	392	$5,000.00	**SunAmerica**		1109722	2141-00000180
09/21/94	09/27/94	392	$5,000.00	**SunAmerica**	Deposit Only	1134507	2073-00000380
10/25/94	10/31/94	392	$5,000.00	**SunAmerica**	Deposit Only	1157504	2073-00000398
12/09/94	12/20/94	392	$5,000.00	**SunAmerica**	W. Hubbell	1187755	2073-00000427
12/15/94	12/20/94	392	$5,000.00	**SunAmerica**	Deposit Only	1191215	2073-00000429
		Total	**$35,000.00**	**Reported $35,000 in 1994**			
12/07/94	12/15/94	392	$6,250.00	**Time Warner**	W. Hubbell	30017260	2073-00000422
		Total	**$6,250.00**	**Reported $6,250 in 1994**			
04/20/94	04/21/94	392	$18,000.00	**Truman Arnold Companies**	W. Hubbell	71627	2073-00000290
		Total	**$18,000.00**	**Reported $18,000 in 1994**			
07/28/94	07/29/94	392	$18,000.00	**Wayne A. Reaud**	W. Hubbell	7060	2150-00000027
		Total	**$18,000.00**	**Reported $18,000 in 1994**			
		1994 TOTAL	**$450,010.00**				

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Check Date	Deposit Date	Deposited to Account No.	Amount	Payor	Endorsment	Check No.	Bates. No.
02/02/95	02/09/95	392	$30,000.00	**Sprint Corporation**	W. Hubbell	551474	2152-00000055
03/24/95	03/30/95	392	$30,000.00	**Sprint Corporation**	W. Hubbell	567087	2152-00000052
			$60,000.00				
09/14/95	09/25/95	392	$24,750.00	**City of Los Angeles**	W. Hubbell	22458 ?	2073-00000513
			$24,750.00				
11/10/95	11/10/95	169	$37,500.30	**William Morris Agency, Inc.**	Wire Transfer		2168-00000005
			$37,500.30				
		1995 TOTAL	**$122,250.30**				

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APPENDIX 3

THE WHITE HOUSE'S NON-COMPLIANCE WITH SUBPOENA REQUESTS FOR ELECTRONICALLY MAINTAINED DOCUMENTS

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I. INTRODUCTION

As of the date of the filing of this Final Report, the White House has failed to produce all documents to which this Office is entitled. Grand juries in the Eastern District of Arkansas and the District of Columbia between March 4, 1994 and December 10, 1998 issued 216 subpoenas to the White House and its affiliates, which required the search of records responsive to those subpoenas, including all electronic records and e-mails. The Independent Counsel first learned from news accounts in February 2000 that the White House may not have conducted complete searches of records within its custody. It was not until several months later that this Office fully realized the scope of the White House's lack of compliance with lawfully issued subpoenas.

II. THE INDEPENDENT COUNSEL LEARNED IN FEBRUARY 2000 THAT ELECTRONIC RECORDS FROM THE BEGINNING OF THE ADMINISTRATION MAY NOT HAVE BEEN SEARCHED IN COMPLIANCE WITH LAWFULLY ISSUED SUBPOENAS.

The Washington Times published a story on February 15, 2000 that first alerted the public and the Independent Counsel that, due to a glitch in the White House's computer server, over 100,000 e-mails were never searched in response to subpoenas. The Independent Counsel, as well as several Congressional investigations issued these subpoenas to the White House. The Washington Times article reported that Northrop Grumman Corporation ("NGC") contractors working at the White House discovered that one of the four White House Lotus Notes e-mail servers handling the e-mail for about 500 computer users had been mislabeled, preventing these e-mails from being properly managed.[1] The contractors first discovered the problem in May

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[1] Jerry Seper & Andrew Cain, White House Accused of Cover-up Ex-Worker Tells of Hidden E-Mails, Wash. Times, Feb. 15, 2000, at A1.

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1998 and determined that it affected servers dating back to August 1996.[2] The problem was not fixed until November 1998 according to the article.[3]

The White House Counsel sent a letter to the Independent Counsel on March 15, 2000 detailing the problems with its computer system and its failure to capture certain incoming e-mails for certain periods of time.[4] These records had not been reconstructed, and therefore, White House Counsel Beth Nolan was unable to determine whether any responsive documents to grand jury subpoenas had been affected.[5] The White House Counsel recently revealed on October 30, 2000 that "incoming e-mail" could include any e-mail not a part of the Executive Office of the President's ("EOP") Automated Records Management System ("ARMS"), such as the Office of the U.S. Trade Representative, the various units which report to the White House Military Office, the White House Access and Visitor Entry System ("WAVES"), any user of the All-in-One system, and the Quorum system.[6]

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[2] Id.

[3] Id.

[4] Letter from Beth Nolan, White House Counsel, to Robert Ray, Independent Counsel (Mar. 15, 2000).

[5] Id. at 6-7.

[6] Letter from Beth Nolan, White House Counsel, to Robert Ray, Independent Counsel (Oct. 30, 2000). The Quorum system was described by Ms. Nolan as a correspondence database system "used by the Correspondence Office and other personnel who dealt with large volumes of correspondence within the White House." Id. at 1. Monica Lewinsky was a likely user of the Quorum system. Id. at 2. The White House Counsel acknowledged that the filing of this Final Report does not prevent this Office from issuing additional subpoenas pursuant to any jurisdictional grants that remain open. Letter from Beth Nolan, White House Counsel, to Robert Ray, Independent Counsel (Nov. 29, 2000). As of the date of the filing of this Final Report, the matter involving allegations of perjury and obstruction of justice by William Jefferson Clinton in connection with his statements in a deposition in Paula Corbin Jones v. William Jefferson

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This Office initiated an investigation as a result of the White House's failure to notify this Office of the problems with its computer system and its inability to certify that all responsive documents to lawfully issued grand jury subpoenas have been produced. The investigation continues at the time of the filing of this Final Report. However, this Office has determined that the White House's failure to search all records within its care, custody, and control, in response to lawfully issued subpoenas, could be broken down into seven categories of records:

1. Failure to search reconstructed e-mail for the time period of January 1993 through June 1994;

2. Failure to search incoming e-mails to 526 users for the time period of August 1996 through November 1998;

3. Failure to search incoming e-mails of approximately 200 users for the time period of November 1998 through May 1999;

4. Failure to search over 600 backup tapes of former employees' hard drives;

5. Failure to search incoming e-mail from the Office of the U.S. Trade Representative, White House Military Office, WAVES system, and any user of the All-in-One system;

6. Failure to search a correspondence database system known as Quorum; and

7. Failure to search the internal e-mail system in the Executive Residence.

A. Reconstructed E-Mails for the Time Period of January 1993 through July 1994.

The White House developed the Automated Records Management System in July 1994[7] in compliance with federal law requiring that federal and presidential records be preserved and

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Clinton and Danny Ferguson, No. LR-C-94-290 (E.D. Ark.), a civil lawsuit, and a subsequent federal grand jury appearance, regarding his relationship with Monica Lewinsky, remains open.

[7] Letter from Beth Nolan, White House Counsel, to Robert Ray, Independent Counsel at 2 (Mar. 15, 2000).

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archived.[8] The ARMS system was designed to capture e-mail records sent from or to the Executive Office of the President's e-mail network. ARMS provided the White House Counsel's Office with a searchable computer database to assist in responding to subpoena requests by capturing all e-mail records sent throughout the network.[9]

Those e-mail records made prior to the installation of ARMS, covering the period January 1993 through July 1994, had to be reconstructed from backup tapes and loaded into ARMS.[10] This process was completed by mid-1999.[11]

This Office was not notified of the late date for the reconstruction of these records until the White House Counsel's March 15, 2000 letter to the Independent Counsel. After it became apparent that these records had not been searched as required by previous subpoenas, on March 22, 2000, this Office insisted upon an immediate search of all e-mails prior to July 1994 and the production of all records contained therein that were responsive to subpoenas issued in connection with the Travel Office investigation.[12] A search using search terms provided by this Office resulted in the production of approximately 3,103 responsive documents by the time of

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[8] 44 U.S.C. §§ 2101, 2201, 2901, 3101, & 3301.

[9] Letter from Beth Nolan, White House Counsel, to Robert Ray, Independent Counsel at 1-2 (Mar. 15, 2000).

[10] Id. at 2.

[11] Id.

[12] Letter from Jay Apperson, Deputy Independent Counsel, to Beth Nolan, White House Counsel (Mar. 22, 2000); Final Report of the Independent Counsel (In re: Madison Guaranty Savings & Loan Association) In re: William David Watkins and In re: Hillary Rodham Clinton Appendix A at x-xii (published Oct. 18, 2000).

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the filing of this Final Report.[13]

On July 31, 2000, this Office then requested the search of all e-mails prior to July 1994 and the production of all records contained therein that were responsive to subpoenas issued in connection with this Office's investigation into matters concerning documents in Vincent Foster's office at the time of his death and the handling of documents from his office after his death.[14] A search of those records using search terms provided by this Office has resulted in the production of approximately 10,559 responsive documents by the time of the filing of this Final Report.[15]

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[13] Letter from Dimitri Nionakis, Associate White House Counsel, to Jay Apperson, Deputy Independent Counsel (June 8, 2000); Letter from Dimitri Nionakis, Associate White House Counsel, to Jay Apperson, Deputy Independent Counsel (June 13, 2000); Letter from Dimitri Nionakis, Associate White House Counsel, to Jay Apperson, Deputy Independent Counsel (June 16, 2000); Letter from Dimitri Nionakis, Associate White House Counsel, to Jay Apperson, Deputy Independent Counsel (June 20, 2000); Letter from Dimitri Nionakis, Associate White House Counsel, to Jay Apperson, Deputy Independent Counsel (June 22, 2000); Letter from Michael Bartosz, General Counsel Office of Administration, Executive Office of the President, to Julie Thomas, Office of the Independent Counsel (July 26, 2000); Letter from Kathy Ruemmler, Associate White House Counsel, to Jay Apperson, Deputy Independent Counsel (Aug. 24, 2000).

[14] Letter from Jay Apperson, Deputy Independent Counsel, to Beth Nolan, White House Counsel (July 31, 2000).

[15] Letter from Gregory Smith, Associate White House Counsel, to Jay Apperson, Deputy Independent Counsel (Aug. 28, 2000); Letter from Gregory Smith, Associate White House Counsel, to Jay Apperson, Deputy Independent Counsel (Sept. 5, 2000); Letter from Gregory Smith, Associate White House Counsel, to Jay Apperson, Deputy Independent Counsel (Sept. 6, 2000); Letter from Gregory Smith, Associate White House Counsel, to Jay Apperson, Deputy Independent Counsel (Sept. 7, 2000); Letter from Gregory Smith, Associate White House Counsel, to Jay Apperson, Deputy Independent Counsel (Sept. 11, 2000); Letter from Gregory Smith, Associate White House Counsel, to Jay Apperson, Deputy Independent Counsel (Sept. 13, 2000); Letter from Gregory Smith, Associate White House Counsel, to Jay Apperson, Deputy Independent Counsel (Sept. 15, 2000); Letter from Gregory Smith, Associate White House Counsel, to Jay Apperson, Deputy Independent Counsel (Sept. 19, 2000); Letter from Gregory Smith, Associate White House Counsel, to Jay Apperson, Deputy Independent Counsel (Sept. 21, 2000); Letter from Gregory Smith, Associate White House Counsel, to Jay Apperson, Deputy Independent Counsel (Sept. 27, 2000); Letter from Gregory Smith, Associate White House Counsel, to Jay Apperson, Deputy Independent Counsel (Sept. 29, 2000); Letter from

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This Office again requested on October 17, 2000 the search of all e-mails prior to July 1994 and the production of all records contained therein that were responsive to subpoenas issued in connection with this Office's investigation into Madison Guaranty/Whitewater and related matters.[16] A search using search terms provided by this Office resulted in the production of approximately 79 responsive documents by the time of the filing of this Final Report.[17]

B. The Mail2 and User-D Problems That Prevented Incoming E-Mails from Being Records Managed.

There were two configuration errors, according to the White House, that prevented two separate categories of incoming e-mails from being recorded in ARMS for a period of time.[18] As a result, these e-mails were never searched for documents responsive to subpoenas from this Office.

The first error affected incoming e-mails to 526 users[19] for the time period of August

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Gregory Smith, Associate White House Counsel, to Jay Apperson, Deputy Independent Counsel (Oct. 4, 2000); Letter from Gregory Smith, Associate White House Counsel, to Julie Thomas, Associate Independent Counsel (Nov. 14, 2000).

[16] Letter from Jay Apperson, Deputy Independent Counsel, to Beth Nolan, White House Counsel (Oct. 17, 2000).

[17] Letter from Gregory Smith, Associate Counsel to the President, to Julie Thomas, Chief Associate Independent Counsel (Dec. 12, 2000); Letter from Gregory Smith, Associate Counsel to the President, to Julie Thomas, Chief Associate Independent Counsel (Dec. 13, 2000); Letter from Gregory Smith, Associate Counsel to the President, to Julie Thomas, Chief Associate Independent Counsel (Dec. 28, 2000); Letter from Gregory Smith, Associate Counsel to the President, to Julie Thomas, Chief Associate Independent Counsel (Jan. 2, 2001).

[18] Letter from Beth Nolan, White House Counsel, to Robert Ray, Independent Counsel at 3-5 (Mar. 15, 2000).

[19] Out of the 526 users, 464 users were in the White House Office, 58 users were in the Office of Policy Development, and 4 users were in the Office of Administration. Letter from Beth Nolan, White House Counsel, to Robert Ray, Independent Counsel at 4 (Mar. 15, 2000).

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1996 through November 1998. During routine maintenance of ARMS, in August 1996, individual user accounts within the White House Office and some within the Office of Administration ("OA") and the Office of Policy Development were moved to a new server identified as "Mail2."[20] However, computer technicians mistakenly coded some of these users as being on "MAIL2," using all upper case letters. The scanning process did not recognize "MAIL2" because ARMS is case sensitive, therefore it did not capture incoming e-mails for these users for records management.[21] This affected all e-mails to those users that were sent from users outside the EOP.[22] This error was first discovered in January 1998, but the full extent of the anomaly was not determined until June 1998.[23] By November 1998, the error was corrected so that all future incoming e-mails to these users would be stored in ARMS.[24] Special backup tapes of the server were created on November 20, 1998 to preserve any unrecorded e-mail that had not yet been deleted by the user.[25] Potentially, these backup tapes contained additional e-mails dating from 1996.

The second error affected the incoming e-mail of approximately 200 users[26] for the period

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[20] Letter from Beth Nolan, White House Counsel, to Robert Ray, Independent Counsel at 3 (Mar. 15, 2000).

[21] Id.

[22] Id.

[23] Id.

[24] Id. at 4.

[25] Id.

[26] Out of the 200 users, 42 users were in the White House Office, 8 users were in the Office of Policy Development, 54 users were in the Office of Management and Budget, 1 user was in the Council of Economic Advisors, 4 users were in the Council on Environmental

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November 1998 through May 1999. This problem affected those e-mail users whose first names began with the letter "D." Incoming e-mail to those users had not been ARMS managed as a result of an error made by a computer technician.[27] The error was corrected in May 1999, and a backup tape of the server was created on June 1, 1999.[28]

1. The White House Counsel's Office Performed a "Test" Search and Incorrectly Concluded There Was Not a Compliance Problem.

Virginia Apuzzo, Assistant to the President for Administration and Management, was responsible for the direct supervision of the Office of Administration, White House Operations, and the White House Military Office in June 1998.[29] She was briefed by Mark Lindsay, OA General Counsel, about the Mail2 and User-D anomalies, and she asked him to prepare a memorandum outlining the problem.[30] Apuzzo sent this memorandum, dated June 19, 1998,[31] to John D. Podesta, Assistant to the President and Deputy Chief of Staff, and to White House

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Quality, 21 users were in the National Security Council, 32 users were in the Office of Administration, 20 users were in the Office of National Drug Control Policy, 6 users were in the Office of Science and Technology, and 3 users were in the White House Climate Change Task Force. Letter from Beth Nolan, White House Counsel, to Robert Ray, Independent Counsel at 5 (Mar. 15, 2000).

[27] User accounts are assigned to a "view" based on the first letter of their first name. The letter "D" was omitted and replaced with the letter "J." Letter from Beth Nolan, White House Counsel, to Robert Ray, Independent Counsel at 5 (Mar. 15, 2000).

[28] Letter from Beth Nolan, White House Counsel, to Robert Ray, Independent Counsel at 5 (Mar. 15, 2000).

[29] Apuzzo 8/30/00 Int. at 1.

[30] Id. at 1-2.

[31] Memo from Virginia M. Apuzzo, Assistant to the President for Management and Administration, to John D. Podesta, Assistant to the President and Deputy Chief of Staff (June 19, 1998) (Doc. Nos. EJ-DC-00006256 through 57).

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Counsel Charles Ruff.[32] Apuzzo immediately recognized the serious nature of the records production problem, stating in an interview with the OIC, "[t]here were holes in the records and legal needed to know."[33]

Shortly before his death, Charles Ruff testified in Cara Leslie Alexander et al., v. Federal Bureau of Investigation et al., Nos. 96-2123, 97-1288 (D.D.C.), that when he was informed of the problem, he was concerned whether or not the integrity of White House's earlier subpoena productions had been affected.[34] Despite this concern, no notification was made to this Office regarding the problem.

Instead, OA General Counsel Mark Lindsay, at the request of an unknown Associate White House Counsel, requested that Betty Lambuth[35] direct Robert Haas,[36] through John Spriggs,[37] to conduct a search of four e-mail accounts affected by the Mail2 anomaly.[38] Once

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[32] Apuzzo 8/30/00 Int. at 2.

[33] Id.

[34] Tr. at 58-62, Cara Leslie Alexander et al., v. Federal Bureau of Investigation et al., Nos. 96-2123, 97-1288 (D.D.C. Aug. 28, 2000) (testimony of Charles Ruff).

[35] Lambuth was a Group Manager on Northrop Grumman Corporation's contract with the Executive Office of the President in the White House. Lambuth 5/3/00 Int. at 1.

[36] Haas was a Lotus Notes System Administrator for Logicon (division of Northrop Grumman Corporation) on Northrop Grumman Corporation's contract with the Executive Office of the President in the White House. Haas 3/28/00 Int. 1.

[37] Spriggs was a Logicon Senior Systems Integration Engineer on Northrop Grumman Corporation's contract with the Executive Office of the President in the White House. Spriggs 3/30/00 Int. 1.

[38] Tr. at 142-43, Cara Leslie Alexander et al., v. Federal Bureau of Investigation et al., Nos. 96-2123, 97-1288 (D.D.C. Aug. 23, 2000) (testimony of Mark Lindsay); Lambuth 5/3/00 Int. at 9; Haas 3/28/00 Int. at 5; Spriggs 3/30/00 Int. at 4. This search included the e-mail

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Haas printed the e-mails from the affected e-mail accounts, he delivered them to Betty Lambuth.[39] Betty Lambuth then delivered this file of documents to Mark Lindsay.[40] Lindsay recalled only that he left the documents with the assistant who sat at the front desk in the White House Counsel's Office.[41]

Former Associate White House Counsel Michelle Peterson testified in Alexander that she was contacted by then Deputy White House Counsel Cheryl Mills and told there was a problem with the production of documents containing e-mails.[42] Mills asked Peterson to compare what had been previously produced with what had recently been printed.[43] Peterson concluded from her comparison that there was no failure to produce e-mails responsive to OIC subpoenas.[44] However, Peterson later filed a Third Declaration in Alexander in which she admitted that she "may have been mistaken with respect to one or possibly two e-mails."[45]

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account of Ashley Raines, White House Director of the Office of Policy Development and Special Liaison to Management and Administration. Haas 3/28/00 Int. at 5.

[39] Haas 3/28/00 Int. at 5.

[40] Lambuth 5/3/00 Int. at 9.

[41] Tr. at 144, Cara Leslie Alexander et al., v. Federal Bureau of Investigation et al., Nos. 96-2123, 97-1288 (D.D.C. Aug. 23, 2000) (testimony of Mark Lindsay).

[42] Tr. at 193-94, 197, Cara Leslie Alexander et al., v. Federal Bureau of Investigation et al., Nos. 96-2123, 97-1288 (D.D.C. Aug. 28, 2000) (testimony of Michelle Peterson). Peterson indicated there was a problem with the production of Monica Lewinsky e-mails. Id. at 197.

[43] Id. at 192-94.

[44] Id. at 202-03.

[45] Peterson 9/27/00 Third Decl. at 2, Cara Leslie Alexander et al., v. Federal Bureau of Investigation et al., Nos. 96-2123, 97-1288 (D.D.C.). Indeed, the protocol entered into by this Office, Campaign Finance Task Force ("CFTF" or "CAMPCON"), and the EOP has resulted in the production of two e-mails from Monica Lewinsky to Betty Currie that were not previously

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In addition, none of the e-mails, either incoming or outgoing, from the Office of the Vice President ("OVP") had ever been searched because none of them had been records managed through ARMS.[46] While most of the OVP e-mail had been preserved on backup tapes, it appears that no one ever attempted to search any tapes in response to subpoenas even though most of the OVP e-mail had been preserved on backup tapes.[47] Further, no one in the White House ever notified any investigative body that such searches were not taking place. It is still unknown whether e-mail from the OVP, once searched, would contain information relevant to this Office's investigations.

This Office brought the matter to the attention of the presiding judge in Alexander,[48] the Honorable Royce C. Lamberth, United States District Judge for the District of Columbia, after reviewing the testimony of Michelle Peterson who stated in an evidentiary hearing before Judge

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produced. Protocol Between the Office of the Independent Counsel and the Executive Office of the President with Respect to the Production of Certain Computer Hard Drive Records and Other Materials Pursuant to Grand Jury Subpoenas (July 7, 2000). E-mail from Monica Lewinsky to Betty Currie (Jan. 29, 1997, 19:44:00 PM) (Doc. No. V252F-DC-00000001); E-mail from Monica Lewinsky to Betty Currie (Oct. 24, 1997, 08:24:00 PM) (Doc. No. V252M-DC-00000001).

[46] Statement of Beth Nolan, White House Counsel, before the House Committee on Government Reform at 7 (Mar. 23, 2000) (Doc. No. ER-DC-00000008).

[47] Id. at 9.

[48] Letter from Jay Apperson, Deputy Independent Counsel to the Honorable Royce C. Lamberth, United States District Judge for the District of Columbia (Oct. 5, 2000). This letter and its attachments to Judge Lamberth were filed under seal at the time of delivery. Order, Cara Leslie Alexander et al., v. Federal Bureau of Investigation et al., Nos. 96-2123, 97-1288 (D.D.C., Oct. 5, 2000) (under seal). Subsequently, the Court conducted a hearing *ex parte, in camera* at which time Deputy Independent Counsel Jay Apperson, acting on behalf of the United States, did not object to the release of this material. Order, Cara Leslie Alexander et al., v. Federal Bureau of Investigation et al., Nos. 96-2123, 97-1288 (D.D.C., Oct. 11, 2000). Accordingly, the material was unsealed and provided to counsel for each party in the case. Id.

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Lamberth:

> [W]ith respect to both Congress and the Independent Counsel, it was unfortunately not that uncommon that documents would turn up after we had made a production, and we would have to produce them and explain why they hadn't been found before. . . . I recall it happening on more than one occasion with respect to [the] Independent Counsel['s] Office.[49]

The practice of the White House Counsel's Office, and Peterson in particular, was to fail to disclose pertinent documents in a timely fashion, and when making productions, to put unrelated materials within those productions.[50]

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[49] Tr. at 264, Cara Leslie Alexander et al., v. Federal Bureau of Investigation et al., Nos. 96-2123, 97-1288 (D.D.C. Aug. 28, 2000) (testimony of Michelle Peterson).

[50] For example, Peterson was personally involved in the belated production of an important document (the "Hilley memo") that was responsive to a subpoena issued from the Eastern District of Virginia, which compelled the production of all documents and things relating or referring to Monica Lewinsky. Grand Jury Subpoena No. V006 (E.D. Va. Jan. 20, 1998). Once the document was found, Peterson delayed its production for over a week. The "Hilley memo" was found on March 30, 1998 during the search of a file once belonging to Evelyn Lieberman, Assistant Chief of Staff to the First Lady, labeled "Legislative Affairs." Letter from Lanny A. Breuer, Special Counsel to the President, to Robert Bittman, Deputy Independent Counsel at 2 (May 29, 1998). It was later placed among 971 pages of documents, which Peterson produced to this Office pursuant to an unrelated subpoena issued from the District of Columbia. Letter from Michelle Peterson, Associate White House Counsel, to Julie Corcoran, Associate Independent Counsel (Apr. 8, 1998) (Doc. Nos. 1089-DC-00000328 through 29); see also Grand Jury Subpoena No. D1089 (D.D.C. Mar. 17, 1998). This Office wrote to Peterson on May 22, 1998 after discovering the inclusion of the document among others from an unrelated production and requested an explanation. Letter from Solomon L. Wisenberg, Deputy Independent Counsel, to Michelle Peterson, Associate White House Counsel (May 22, 1998). Peterson's superior, Lanny Breuer, Special Counsel to the President, instead wrote this Office the following:

> When we discover a previously undiscovered document that is responsive to a prior subpoena we produce the document to you, and often in conjunction with a production related to a subpoena that we subsequently received. Although we provide you with a production log, we do not invariably and explicitly identify a recently discovered document to you in our cover letter.

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2. Backup Tapes of E-Mails.

Backup tapes of the servers were created to preserve the unrecorded e-mail at the time that each problem was corrected.[51] Special backup tapes were created on November 20, 1998 shortly after the Mail2 anomaly was resolved.[52] These backup tapes may have preserved the unrecorded e-mails from 1996.[53] As with the Mail2 problem, after the user-D problem was resolved, a special backup tape of the server was created on June 1, 1999.[54] The White House at this point was obligated, pursuant to outstanding subpoenas, to reconstruct the non-managed e-mail from the backup tapes and to search and produce e-mails responsive to those subpoenas from the Office of Independent Counsel, as well as other investigative bodies. Instead, the White House failed to disclose the e-mail problem and took no steps to reconstruct the missing e-mail and upload it into ARMS or any other searchable database.

The White House explained to this Office that there were approximately 3400 backup tapes containing unreconstructed e-mail.[55] The White House further stated "[t]he preliminary cost estimate we have received to reconstruct these tapes so that they could be placed on ARMS and searched using keywords is between $1.8 million and $3.0 million. This process is estimated

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Letter from Lanny A. Breuer, Special Counsel to the President, to Robert Bittman, Deputy Independent Counsel at 2 (May 29, 1998).

[51] Letter from Beth Nolan, White House Counsel, to Robert Ray, Independent Counsel at 4-5 (Mar. 15, 2000).

[52] Id. at 5.

[53] Id. at 4.

[54] Id. at 5.

[55] Id. at 7.

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to take approximately one to two years."[56]

Due to repeated delays and the White House's inability to search the non-records managed e-mail, the Office of Independent Counsel and the Department of Justice Campaign Finance Task Force ("CFTF" or "CAMPCON") entered into an agreement on July 7, 2000 with the Executive Office of the President that would allow access to a representative sample of EOP and OVP computer backup tapes containing e-mail.[57] This agreement permitted the Federal Bureau of Investigation Computer Analysis Response Team ("FBI CART") to reconstruct and search these backup tapes. The agreement, or protocol, allows FBI CART access to the original tape so that an extraction of the unrecorded e-mail can be performed.[58] As a result of this protocol, both this Office and CFTF have received documents not previously produced by the White House.

The White House briefed this Office and CFTF personnel on September 12, 2000 about the status of the e-mail restoration project. In that briefing, the White House indicated it was able to perform limited key word searches of e-mail. The White House then reiterated its offer on October 4, 2000, explaining that the searches could be conducted in three ways:

1. A search of one hundred tapes for seventy e-mail accounts using seventy search terms in three weeks;

2. A search of fifty tapes for thirty-five e-mail accounts and thirty-five search terms in two weeks;

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[56] Id.

[57] Protocol Between the Office of the Independent Counsel and the Executive Office of the President with Respect to the Production of Certain Computer Hard Drive Records and Other Materials Pursuant to Grand Jury Subpoenas (July 7, 2000).

[58] Id.

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3. A search of all e-mail accounts on a single tape using a single search term within a few days.[59]

The results of these searches would then need to be reviewed by White House Counsel's staff.

On October 12, 2000, this Office proposed that the White House perform extraction of all "$unrecorded" messages on the backup tapes and turn these over to the review team already in place.[60] The White House rejected this compromise on October 23, 2000, stating it did not have the technical capability to perform extraction of all previously unrecorded e-mail as of that date.[61] Further, the White House declined to use the search and review options under the protocol stating its belief that a joint review under the protocol stood in "sharp contrast to the widely accepted notion that a recipient of a subpoena is entitled to conduct a review of its documents in order to make responsiveness and privilege determinations."[62]

The estimated time frame to reconstruct the tapes has recently been amended. The Department of Justice attorney representing the White House in Alexander informed the court on November 2, 2000 that approximately 3,000 of the 3,500 tapes had already been copied and that he believed e-mails could be extracted from these tapes beginning November 15, 2000.[63] No

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[59] Letter from Lisa J. Klem, Associate White House Counsel, to Alan Gershel, Deputy Assistant Attorney General, and Julie Thomas, Associate Independent Counsel (Oct. 4, 2000).

[60] Letter from Julie Thomas, Associate Independent Counsel, to Lisa J. Klem, Associate White House Counsel, and Michael K. Bartosz, General Counsel, Office of Administration, Executive Office of the President (Oct. 12, 2000).

[61] Letter from Lisa J. Klem, Associate White House Counsel, to Julie Thomas, Associate Independent Counsel (Oct. 23, 2000).

[62] Id. at 2.

[63] Tr. at 225-26, Cara Leslie Alexander et al., v. Federal Bureau of Investigation et al., Nos. 96-2123, 97-1288 (D.D.C. Nov. 2, 2000) (statement of James Gilligan).

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responsive e-mails from these tapes were produced by the time of the filing of this Final Report.

C. Contrary to White House Assertions That All Responsive Documents Have Been Produced, the Independent Counsel Learned That Hard Drives of Departed Employees Have Not Been Searched.

The Independent Counsel also learned during the course of its investigation into the Mail2 and User-D anomalies that the hard drives of departed White House employees had not been searched in response to grand jury subpoenas. The Washington Post reported, on April 18, 2000, Deputy White House Press Secretary Jim Kennedy's statement confirming that about 600 backup tapes of the hard drive records of former White House employees had never been searched.[64] Kennedy was quoted as stating, "a subpoena can ask for the moon, that doesn't mean we have to produce it."[65] Kennedy further suggested that persons in the White House might unilaterally decide not to search records if they "don't think [the subpoena is] reasonable, given the time and expense."[66] Other "officials" were quoted as stating that "they have no intention of examining the electronic records -- memos, speeches, drafts, schedules, notes and other items written on the computers of former staffers -- because of the prohibitive costs involved."[67]

This Office, in light of these public revelations, wrote to Beth Nolan, Counsel to the President, seeking an answer as to whether the hard drive records of former employees had ever

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[64] George Lardner Jr., White House Data Unsearched; Hard Drives, Tapes Not Examined for Subpoenaed Records, Wash. Post, Apr. 18, 2000, at A27.

[65] Id.

[66] Id.

[67] Id.

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been searched in response to subpoenas.[68] On May 5, 2000, the White House acknowledged that other than in three instances,[69] searching the hard drives of persons who have left the White House was "not done so as a routine matter." [70]

The Independent Counsel and the EOP entered into an agreement on July 7, 2000 to allow production and examination of certain computer hard drive records.[71] These hard drive records include the reallocation tapes for Deborah Gorham, Vincent Foster, and a Pinnacle Optical Disk containing an imaged hard drive which was created by FBI Special Agent Thomas R. Murray and provided to Associate White House Counsel Miriam R. Nemetz on August 11, 1995.[72] The review of these items is ongoing; however, it appears that none of this information had previously been reviewed by this Office.

The Independent Counsel on October 11, 2000 requested production of additional records from the White House, including all databases showing backup tapes of hard drives of former

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[68] Letter from Jay Apperson, Deputy Independent Counsel, to Beth Nolan, White House Counsel (Apr. 20, 2000); Letter from Jay Apperson, Deputy Independent Counsel, to Beth Nolan, White House Counsel (Apr. 26, 2000).

[69] Letter from Sally P. Paxton, Special Associate Counsel to the President, to Solomon L. Wisenberg, Associate Independent Counsel (October 16, 199[7]); see also Grand Jury Subpoena No. D781 (D.D.C. Sept. 19, 1997).

[70] Letter from Beth Nolan, White House Counsel, to Robert Ray, Independent Counsel (May 5, 2000).

[71] Protocol Between the Office of the Independent Counsel and the Executive Office of the President with Respect to the Production of Certain Computer Hard Drive Records and Other Materials Pursuant to Grand Jury Subpoenas (July 7, 2000).

[72] Letter from Miriam R. Nemetz, Associate White House Counsel, to SAC William C. Megary, Federal Bureau of Investigation (Aug. 11, 1995) (Doc. Nos. EL-DC-00000095 through 96); Murray 5/17/00 Int. at 1.

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employees, as the documents previously produced were incomplete redactions of the databases.[73] The White House had not delivered these records by the time of the filing of this Final Report.

D. E-Mail from the WAVES System, the Quorum System and the Executive Residence.

The White House Counsel recently revealed on October 30, 2000 that e-mail from the Office of the U.S. Trade Representative, the various units which report to the White House Military Office, the White House Access and Visitor Entry System ("WAVES"), any user of the All-in-One system, and the Quorum system, were also not ARMS records managed.[74] Therefore, electronic records in these systems were also not searched for documents responsive to lawfully issued subpoenas.

1. Executive Residence E-Mail.

On November 27, 2000, the White House provided this Office with a list of current e-mail accounts for the Executive Residence's internal e-mail system.[75] The users do not include either the President or the First Lady, and primarily consist of those persons involved in the day-to-day maintenance operations of the residence.[76] White House Counsel Beth Nolan represented in a November 6, 2000 meeting with this Office that the Executive Residence staff had routinely searched for responsive e-mails and that it was her belief that the system was not routinely

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[73] Letter from Jay Apperson, Deputy Independent Counsel, to Beth Nolan, White House Counsel (Oct. 11, 2000).

[74] Letter from Beth Nolan, White House Counsel, to Robert Ray, Independent Counsel (Oct. 30, 2000).

[75] Letter from Gregory Smith, Associate White House Counsel, to Julie Thomas, Chief Associate Independent Counsel (Nov. 27, 2000); List of all e-mail accounts on the Executive Residence Domain (undated) (Doc. No. MGSL-FR-00000030).

[76] List of all e-mail accounts on the Executive Residence Domain (undated) (Doc. No. MGSL-FR-00000030).

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backed up. It was unclear by the time of the filing of this Final Report whether any backup tapes of the Executive Residence e-mail system exist.

2. WAVES System.

During the November 6, 2000 meeting, White House Counsel Beth Nolan also explained that when an individual requests a WAVES pass for a White House visitor via e-mail, that individual will receive an e-mail confirming the receipt of the request. This system that sends confirming e-mail was records managed by ARMS and thus was affected by the Mail2 anomaly. However, the WAVES computer system that tracks entry and exit of White House visitors is maintained on a separate database and therefore not affected by the Mail2 anomaly.

3. Quorum System.

The White House produced to this Office a list of users of the Quorum e-mail system.[77] The White House is in the process of restoring the backup tapes of the Quorum system in order to conduct a search for responsive documents. At the time of the filing of this Final Report, some responsive documents have been received, however, the search continues.[78]

III. ALLEGATIONS OF THREATS MADE TO NORTHROP GRUMMAN EMPLOYEES TO CONCEAL THE E-MAIL PROBLEM.

In the course of its investigation into possible obstruction of justice by White House officials by their failure to search all records within its custody, care, and control for

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[77] WordPerfect Directory of Quorum e-mail system users (Dec. 18, 1999) (Doc. No. MGSL-FR-00000029). The directory of users indicated that Monica Lewinsky had an account with the Quorum system. Id.

[78] Letter from Gregory Smith, Associate Counsel to the President, to Julie Thomas, Chief Associate Independent Counsel (Nov. 27, 2000); Letter from Gregory Smith, Associate Counsel to the President, to Julie Thomas, Chief Associate Independent Counsel (Dec. 8, 2000); Letter from Gregory Smith, Associate Counsel to the President, to Julie Thomas, Chief Associate Independent Counsel (Dec. 12, 2000).

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responsiveness to lawfully issued subpoenas, and their failure to notify this Office of problems preventing complete compliance with these subpoenas, this Office considered allegations that threats were made to Northrop Grumman Corporation ("NGC") employees to prevent public disclosure of the failure to search thousands of e-mails. At the time of the filing of this Final Report, not all witnesses have been interviewed, and the investigation continues.

A. Background on Allegations of Threats.

On June 12, 1998, Robert Haas was training Yiman Salim, another NGC employee, to upgrade Lotus Notes, a software program used by the White House for e-mail.[79] Haas and Salim noticed an anomaly in the "holding area" in the Mail2 server. The "holding area," which is only supposed to hold e-mail until scanned by ARMS, was full of e-mail dating back to 1996.[80] In effect, this "holding area" was not being managed by ARMS for archiving purposes.[81] They subsequently advised their supervisor, Betty Lambuth, about the problem.[82]

Lambuth's supervisors, Bob Whiteman, NGC Group Manager, and Steve Hawkins, NGC Program Manager, were not in the office on the day she was told of the problem.[83] Therefore, Lambuth notified Laura L. Crabtree (later married and referred to as Laura Callahan), Branch Chief for Desktop Systems, of the problem.[84] Callahan instructed her not to discuss the matter

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[79] Haas 3/28/00 Int. at 1.

[80] Id. at 1-2.

[81] Id. at 2.

[82] Id.; Salim 3/28/00 Int. at 2.

[83] Lambuth 5/3/00 Int. at 2.

[84] Id.

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with anyone, while she found out how "they" wanted to handle the e-mail problem.[85]

Callahan told Lambuth the following morning that she had spoken with Mark Lindsay about the problem.[86] Callahan relayed Lindsay's instructions that neither Lambuth, nor her employees, were to discuss this matter with anyone, including Hawkins and Jim Wright.[87] Furthermore, according to Lambuth, Callahan reported Lindsay's threat that if anyone did talk about it, they would "lose their job, be arrested and thrown in jail."[88] Callahan also informed Lambuth that they did not want any of this leaking to the press.[89] Lambuth told Callahan that she wanted to speak with Lindsay directly about this.[90]

The following morning, Lambuth told the members of her team -- Bob Haas, Yiman Salim, Sandy Golas, and John Spriggs -- about Callahan's and Lindsay's statements.[91] According to Lambuth, several members of the team, including her, mentioned that they felt threatened.[92]

Lambuth later that day had a meeting with Lindsay.[93] Lindsay reiterated what Callahan had told her, that they were to speak to no one about the e-mail problem, including their spouses

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[85] Id. at 2-3.

[86] Id. at 3.

[87] Id.

[88] Id.

[89] Id.

[90] Id.

[91] Id.

[92] Id. However, reports of interviews of other members of the team reflect that they did not feel threatened until their subsequent meeting with Callahan.

[93] Id. at 3-4.

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and supervisors.[94] Lindsay also mentioned that they did not want this problem leaked to the media.[95] Lambuth recalled Lindsay mentioning that this matter involved national security and therefore, the information should be considered top secret.[96] Lambuth also was instructed by either Lindsay or in her prior meeting with Callahan, that members of the team were not to e-mail, talk on the telephone, or write anything down about the matter.[97] Lindsay also repeated that if they did talk with someone, they would lose their jobs, be arrested, and be put in jail.[98] Lambuth considered Lindsay's comments to be threatening.[99]

A meeting occurred the next morning in Callahan's office with Lambuth and her staff, Haas, Salim, Golas, and Spriggs, and with Lindsay participating by conference call.[100] Lindsay instructed the group not to talk about the e-mail problem with anyone, including their spouses and supervisors, Hawkins and Wright.[101] Lambuth recalled Lindsay reiterating the threat of jail if anyone spoke of the matter.[102] Spriggs recalled Lindsay stating words to the effect that "[w]e

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[94] Id. at 4.

[95] Id.

[96] Id.

[97] Id.

[98] Id.

[99] Id.

[100] Id. at 4-5; Spriggs 3/30/00 Int. at 3; Haas 3/28/00 Int. at 2; Golas 3/28/00 Int. at 1-2; Salim 3/28/00 Int. at 3. Salim had no recollection of Lindsay participating by phone. Salim 3/28/00 Int. at 3.

[101] Lambuth 5/3/00 Int. at 5; Spriggs 3/30/00 Int. at 3-4; Haas 3/28/00 Int. at 2; Golas 3/28/00 Int. at 2; Salim 3/28/00 Int. at 3.

[102] Lambuth 5/3/00 Int. at 5.

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consider this problem very serious to the point that if we have to exercise our rights, they would if they had to" and something about "to the fullest extent of the law."[103] Spriggs could not recall the context in which this comment was made; yet he did consider it to constitute a threat.[104]

Haas stated that after Lindsay hung up, Callahan reiterated Lindsay's cautionary statements and told the employees that if they broke this confidence, "[w]e will use the law to put you in jail, you won't work in this business or in this town again, we will use the fullest extent of the law to prosecute you" or words to that effect.[105] Haas then asked Callahan whether he could tell Virginia Apuzzo if she inquired.[106] Callahan told him that "there will be a jail cell with your name on it" for discussing the problem with her.[107] Haas further asked what would happen if he told his wife.[108] Callahan replied, "[t]hen you'll go to jail for that too."[109] Haas said Callahan did not appear to be kidding and he took her seriously.[110]

Lambuth confirmed Haas' recollection of Callahan's statement of a jail cell if he told his wife.[111] Golas recalled that it was probably Callahan that used the word "jail" when speaking -

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[103] Spriggs 3/30/00 Int. at 3.

[104] Id. at 3-4.

[105] Haas 3/28/00 Int. at 2.

[106] Id. at 2-3.

[107] Id.

[108] Id. at 3.

[109] Id.

[110] Id.

[111] Lambuth 5/3/00 Int. at 5.

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with Haas.[112] However, neither Spriggs nor Salim were able to corroborate Haas' statements about Callahan's threats of imprisonment.[113] Spriggs stated that he had no recollection of either Lindsay or Callahan using the words "jail" or "prosecution."[114] Salim also had no recollection of Callahan making any comments about them being fired, prosecuted, or sent to jail if they disclosed the information.[115] Salim stated that she did not feel threatened by anything Callahan had said to the group.[116]

B. Callahan Refuted Allegations of Threats.

Laura Crabtree Callahan explained that she first learned of the e-mail problem in June 1998 from Betty Lambuth.[117] Callahan instructed Lambuth to research the matter and determine the scope of the problem.[118] Lambuth informed Callahan within a day that part of the problem involved previously unseen e-mail messages.[119]

The following day Lambuth told Callahan that she was concerned about her staff

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[112] Golas 3/28/00 Int. at 2.

[113] Spriggs 3/30/00 Int. at 4; Salim 3/28/00 Int. at 3.

[114] Spriggs 3/30/00 Int. at 4.

[115] Salim 3/28/00 Int. at 3.

[116] Id.

[117] Callahan 10/12/00 CAMPCON Int. at 1.

[118] Id.

[119] Id. The previously unseen e-mail messages were between Monica Lewinsky and Ashley Raines. Id. Callahan was surprised to learn about these e-mails because she had not asked for such a search, nor did she believe she had the necessary authority to do so. Id.

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gossiping about the problem.[120] Callahan told Lambuth to refocus her staff and if they had any questions, they should ask either Callahan or Mark Lindsay.[121] Callahan decided that a meeting with Lambuth's staff was necessary since rumors about the e-mail problem continued to circulate.[122] She informed Lindsay of the gossip and he indicated that he wanted to be present during the meeting.[123] Callahan recalled that Lambuth, Haas, Spriggs, Salim, and Golas were present, with Lindsay participating by speakerphone.[124] According to Callahan, Lindsay emphasized the gravity of the problem and instructed the group not to talk about it.[125] Callahan and Lindsay both told the group that if they felt the need to go to the media about the problem, that they had to go through the proper channels.[126] Callahan acknowledged the press coverage of the alleged White House misconduct, but reminded the group that they should focus on fixing the problem.[127] Callahan could not recall any discussion of consequences if the matter became public, or any mention of national security or jail.[128]

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[120] Id. at 2.

[121] Id.

[122] Id.

[123] Id.

[124] Id.

[125] Id.

[126] Id.

[127] Id.

[128] Id.

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IV. THE WHITE HOUSE'S FAILURE TO PRODUCE ALL RELEVANT DOCUMENTS CONCERNING VINCENT FOSTER.

A. The Unexplained Appearance and Disappearance of Vincent Foster's and Deborah Gorham's Hard Drives and Backup Tapes.

The Office of the Independent Counsel served the White House a grand jury subpoena on May 5, 1994, which, among other things, called for the following:

> Any and all documents and/or communications written by, sent to or referring or relating to Vincent Foster, Jr. . . . contained on the fixed hard drive or removable hard disk cartridges of computers used by, or in the office or work space of Vincent W. Foster, Jr. or Deborah Gorham, or contained on any floppy disk or diskette maintained by Vincent W. Foster, Jr. or Deborah Gorham.[129]

This Office served the White House with a subsequent grand jury subpoena on March 20, 1995, which, among other things, called for the following:

> Any and all documents and/or communications from or by Vincent W. Foster, Jr., or Deborah Gorham contained on any floppy disks or diskettes, disks, diskettes, disk packs, fixed hard drives, removable hard disk cartridges, mainframe computers, Bernoulli boxes, optical disks, WORM disks, magneto/optical disks, floptical disks, magnetic tape, tapes, laser disks, video cassettes, CD-ROMs or any other media capable or storing magnetic coding, microfilm, or microfiche.[130]

No records from the hard drives of Foster or Gorham were produced in response to these subpoenas.

This Office, as a result of the April 18, 2000 Washington Post article, asked the White House on April 20, 2000 for an inventory of all hard drive and "C" drive records.[131]

The White House produced on May 5, 2000 an inventory of reallocation tapes composed

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[129] Grand Jury Subpoena No. D33 (D.D.C. May 5, 1994).

[130] Grand Jury Subpoena No. D210 (D.D.C. May 20, 1995).

[131] Letter from Jay Apperson, Deputy Independent Counsel, to Beth Nolan, White House Counsel (Apr. 20, 2000).

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from two separate databases that span the time frame of approximately 1994 to 1999.[132] These documents reflected the existence of backup tapes of hard drives for Vincent Foster and Deborah Gorham.[133] Foster's hard drive was listed as being located on reallocation tape #554, with a creation date of October 16, 1997.[134] Gorham's hard drive was listed as being located on reallocation tape # 229/231, but showing two different creation dates: November 16, 1993[135] and September 26, 1995.[136] This Office recently learned that this reallocation tape database printout supplied by the White House contained only selected fields of information available.[137] On October 11, 2000, the Office of the Independent Counsel requested additional records from the White House including production of all databases showing backup tapes of hard drives of former employees as the documents previously produced were incomplete redactions of the

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[132] White House FileMaker Pro and Lotus Approach Reallocation Tape Databases (Apr. 28, 2000) (Doc. Nos. V257-00000145 through 267).

[133] Id.

[134] White House Lotus Approach Reallocation Tape Database (Apr. 28, 2000) (Doc. No. V257-00000210). Daniel Gunia, former employee of the Information Systems and Technology Department of the Office of Administration, speculated that the creation date of Foster's tape might have been altered when the database was updated or when the date migrated from a pre-existing database to Lotus Approach. Gunia 10/3/00 Int. at 5.

[135] White House Lotus Approach Reallocation Tape Database (Apr. 28, 2000) (Doc. No. V257-00000157). On September 4, 1997, Deborah Gorham left the West Wing of the White House. Gorham 6/7/94 Int. at 2. On November 17, 1993, Gorham then left the White House Counsel's Office and returned to employment in the private sector. Gorham 3/21/95 Int. at 7.

[136] White House Lotus Approach Reallocation Tape Database (Apr. 28, 2000) (Doc. No. V257-00000214).

[137] Gunia 10/3/00 Int. at 4. Gunia was responsible for maintaining the FileMaker Pro Database that contained the list of former employee's reallocation tapes. Gunia later turned this database, and an accompanying file folder, over to a White House computer specialist from the EOP. The information contained in the database was then subsequently transferred into the Lotus Approach Database. Id. at 2.

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databases.[138] Further, this Office had learned that backup tapes of the "F" drives of departed employees were also made and subsequently also requested these backup tapes.[139] The White House has not delivered these records by the time of the filing of this Final Report.

This Office throughout the investigation has continued to try to determine the location of Vincent Foster's hard drive and whether any backup tape was created from his computer. Some questions have been addressed, yet many remain unanswered at the time of the filing of this Final Report.

James MacDonald Jr., former Special Assistant to the Director of OA, was responsible for all computer and telephone systems at the EOP.[140] MacDonald contacted Bruce Overton, OA Counsel, after Vince Foster's death about sequestering Foster's computer. [141] Overton told him that the White House Counsel's office would be handling the matter.[142] MacDonald learned during his subsequent October 1994 interview with the FBI that Foster's computer had been lost.[143] MacDonald then began to conduct a personal investigation into the circumstances surrounding Foster's computer.[144] MacDonald matched the serial numbers of the computers with

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[138] Letter from Jay Apperson, Deputy Independent Counsel, to Beth Nolan, White House Counsel (Oct. 11, 2000).

[139] Id.

[140] MacDonald 9/13/00 Int. at 1.

[141] Id.

[142] Id.

[143] Id.

[144] Id. at 2.

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all personnel in the White House Counsel's Office.[145] MacDonald determined that Foster never used his e-mail account, and was told by members of his staff that they observed papers stacked on Foster's computer and it appeared to them that he never used it.[146] He also assessed all the Help Desk records relating to the Counsel's office, but found no record under Foster's name.[147]

MacDonald, however, did recall finding a Client Service Action Request ("CSAR") under the name of Thomas Castleton[148] requesting assistance on a computer with the same serial number as the computer that had been assigned to Foster.[149] MacDonald identified a December 3, 1993 CSAR report requesting repair on the computer of Thomas Castleton, an IBM computer, model 8555, serial number 23-1286096 as the same CSAR.[150] The problem with Castleton's computer was summarized on the CSAR as "user is having problems booting up the system."[151] William Van Horn, former computer technician for Planning & Research Corporation ("PRC") -- a contractor to the Information Systems and Technology Unit ("IS&T") -- was the technician who responded to the request.[152] Van Horn explained that he was unable to repair the computer

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[145] Id.

[146] Id.

[147] Id.

[148] Thomas Castleton was the former Special Assistant to the White House Counsel. Castleton 5/3/94 Int. at 1.

[149] MacDonald 9/13/00 Int. at 2.

[150] Id.; CSAR Print Request Record (Dec. 3, 1993) (Doc. No. 033-DC-00000740).

[151] CSAR Print Request Record (Dec. 3, 1993) (Doc. No. 033-DC-00000740).

[152] Van Horn 9/6/00 Int. at 3.

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and instead replaced the hard drive.[153] He also attempted to restore the information on the hard drive he had removed, but without success.[154] He then sent the old hard drive to the depot in the basement of the New Executive Office Building for destruction.[155] A document entitled "Destroyed Hard Drives," dated April 21, 1994, listed Castleton's hard drive as being destroyed.[156] MacDonald verified that the hard drive removed by Van Horn had been destroyed by asking Mike Saunders, a PRC subcontractor who was in charge of the depot.[157]

Van Horn was shown a document entitled "Inventory Tracking Sheet," dated March 31, 1993.[158] Van Horn explained that the document recorded the location and identity of the individual to whom computer equipment was assigned.[159] This document identified an IBM computer, model 8555, serial number 23-1286096, as having been assigned to "Foster V."[160] Van Horn acknowledged that this was the same serial number as the computer he had worked on for Castleton.[161]

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[153] Id.; CSAR Print Request Record (Dec. 3, 1993) (Doc. No. 033-DC-00000740).

[154] Van Horn 9/6/00 Int. at 3.

[155] Id.

[156] The document includes a handwritten notation, "Last updated 12/17/93." Destroyed Hard Drives (Apr. 21, 1994) (Doc. No. 033-DC-00000741); MacDonald acknowledged the handwriting as his own. MacDonald 9/12/00 Int. at 2.

[157] MacDonald 9/12/00 Int. at 2.

[158] Inventory Tracking Sheet (Mar. 31, 1993) (Doc. No. FOST-DC-00000355).

[159] Van Horn 9/6/00 Int. at 3.

[160] Inventory Tracking Sheet (Mar. 31, 1993) (Doc. No. FOST-DC-00000355).

[161] Van Horn 9/6/00 Int. at 3.

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MacDonald also conducted a search for the computer with the serial number that had been assigned to Foster.[162] He located the computer on the floor of Castleton's office in the Old Executive Office Building.[163] According to MacDonald, Castleton had been using Foster's computer until it "crashed" in December 1993.[164]

MacDonald did not locate a CSAR request to back-up Foster's computer, whether after his death or at any time while Castleton was using it.[165] MacDonald indicated that a backup tape could only have been made from Foster's computer from the time after his death until the hard drive crashed while Castleton was using it on December 3, 1993.[166]

On May 10, 2000, the White House produced an e-mail to this Office that it had found while performing an ARMS search unrelated to the subject matter of the e-mail.[167] The e-mail was dated August 7, 1995, and included two August 4, 1995 e-mail attachments.[168] The subject matter of these e-mails concerned what to do with "Vince Foster's (PC backup) tape."[169] The

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[162] MacDonald 9/12/00 Int. at 3.

[163] Id.

[164] Id.

[165] Id.

[166] Id.

[167] Letter from Steven Reich, Senior Associate White House Counsel, to Robert Ray, Independent Counsel (May 10, 2000) (Doc. No. MGSL-FR-00000022).

[168] E-mail from Ranelle A. Lopez to Lawrence R. Jurcich (Aug. 7, 1995, 10:37:00 EST) (Doc. No. MGSL-FR-00000023); E-mail from Sheryl L. Hall to Ranelle A. Lopez (Aug. 4, 1995, 18:08:00 EST) (Doc. Nos. MGSL-FR-00000023 through 24); E-mail from Ranelle A. Lopez to Sheryl Hall (Aug. 4, 1995, 17:52:00 EST) (Doc. No. MGSL-FR-00000025).

[169] Id.

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content of the e-mails appears to indicate that on August 4, 1995, Paul Dagenais, Computer Specialist, Customer Service Branch of the Information Systems and Technology Unit of the Office of Administration, secured a Foster backup tape, referred to in the e-mails as "TAPE", and delivered it to Ranelle Lopez, Office of Administration, Executive Office of the President employee.[170] Lopez, not knowing what to do with this tape, provided it to the security office, where Mark Frownfelter, Office of Administration, Executive Office of the President employee, secured the tape in a safe over the weekend.[171] Then on August 7, 1995, Lopez and Dagenais "picked up the tape from the Security Office and secured it in the EOP data center reallocation tape repository (file cabinet)."[172]

On October 18, 2000, this Office interviewed Dagenais about the Foster backup tape mentioned in these e-mails. While Dagenais could not recall ever having seen these e-mails before, he recounted how he had come into possession of a copy of a hard drive backup tape marked "Foster." The tape was the same as other reallocation tapes, but did not have a sequential inventory number and had not been logged into the tape cabinet.[173] Dagenais did not think the tape should be stored in the backup tape cabinet because he thought it was too important and had

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[170] E-mail from Ranelle A. Lopez to Sheryl Hall (Aug. 4, 1995, 17:52:00 EST) (Doc. No. MGSL-FR-00000025).

[171] Id.

[172] E-mail from Ranelle A. Lopez to Lawrence R. Jurcich (Aug. 7, 1995, 10:37:00 EST) (Doc. No. MGSL-FR-00000023).

[173] Dagenais 10/18/00 Int. at 3. A Northrop Grumman employee would issue the inventory number, and then Dagenais was responsible for storing the tapes in the EOP Data Center. Id. at 1-2.

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not previously been stored there.[174] Dagenais, as a result, gave the tape to Lopez, who was at the time the Acting Branch Chief.[175] Dagenais had no recollection of ever seeing the tape after he provided it to Lopez on August 4, 1995, and did not recall picking the tape up from the Security Center with Lopez on August 7, 1995.[176] Dagenais also could not recall who gave him the tape.[177]

Dagenais also explained that sometime in 1998, he observed in the tape cabinet about six hard drives at the bottom of the cabinet.[178] The hard drive on the top had a yellow "post-it" note with the handwritten notation "Foster" and possibly Foster's user ID.[179] The hard drive was from an IBM PS2 computer.[180] Dagenais was not aware that hard drives were supposed to be stored in this cabinet.[181] He immediately advised Karl Heissner, then Acting Director of IS&T, because the hard drive had Foster's name on it.[182] Dagenais stated that Heissner did not immediately remove the hard drive from the cabinet.[183] The next time Dagenais entered the cabinet again was

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[174] Id. at 3.

[175] Id.

[176] Id. at 4.

[177] Id. at 3.

[178] Id. at 2-3.

[179] Id. at 3.

[180] Id.

[181] Id.

[182] Id.

[183] Id.

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approximately two years later, in April 2000, and he observed that the hard drives were no longer there.[184]

On May 11, 2000, this Office requested the original reallocation tapes of Gorham's and Foster's hard drives, as well as the Foster tape referenced in the August 1995 e-mails.[185] The White House responded to this request by asserting that this Office had previously resolved the issues surrounding Gorham's hard drive and they should not be "reopened" at this "late date."[186] The White House supplied an August 11, 1995 letter from Miriam Nemetz, Associate Counsel to the President, to Special Agent In Charge William Megary of the FBI, requesting the FBI to reconstruct Gorham's original hard drive in an effort to recover any previously deleted documents.[187] The White House further asserted, based on this August 11, 1995 letter, that this Office was not only "provided with printouts from Ms. Gorham's hard drive, it actually had physical possession of the hard drive during the reconstruction process."[188]

This Office received this August 11, 1995 letter request and subsequent printout from

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[184] Id.

[185] Letter from Jay Apperson, Deputy Independent Counsel, to Beth Nolan, White House Counsel (May 11, 2000).

[186] Letter from Steven Reich, Senior Associate White House Counsel, to Jay Apperson, Deputy Independent Counsel (May 16, 2000) (Doc. Nos. EL-DC-00000002 through 5).

[187] Letter from Miriam R. Nemetz, Associate White House Counsel, to SAC William C. Megary, Federal Bureau of Investigation (Aug. 11, 1995) (Doc. Nos. EL-DC-00000095 through 96).

[188] Letter from Steven Reich, Senior Associate White House Counsel, to Jay Apperson, Deputy Independent Counsel at 3 (May 16, 2000) (Doc. No. EL-DC-00000003).

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Gorham's hard drive for the first time on May 16, 2000.[189] This Office never requested the FBI to perform a reconstruction of Gorham's hard drive, as this Office was never made aware of its existence. Furthermore, this Office was never in possession of Gorham's hard drive.

Rather, as a result of a recent production of documents by the White House,[190] it was the U. S. Senate Special Committee to Investigate Whitewater Development Corporation and Related Matters that requested the White House to have the FBI examine the hard drive of Gorham's computer.[191] As a result of the Special Committee's request, Miriam Nemetz worked with FBI Special Agent Thomas Murray to examine the data on the hard drive.[192] Murray performed the reconstruction of the hard drive at the White House, printed some of the filtered data, and copied some of the files onto Nemetz's computer.[193] The recent production of documents explained that the data uploaded to Nemetz's computer was the filtered data that was

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[189] Attachments to Letter from Steven Reich, Senior Associate White House Counsel, to Jay Apperson, Deputy Independent Counsel at Tab G (May 16, 2000) (Doc. Nos. EL-DC-00000094 through 96).

[190] Letter from Gregory Smith, Associate White House Counsel, to Julie Thomas, Chief Associate Independent Counsel (Nov. 8, 2000) (Doc. Nos. WHV268-DC-0000009 through 10); Letter from Gregory Smith, Associate White House Counsel, to Julie Thomas, Chief Associate Independent Counsel (Nov. 30, 2000).

[191] Letter from Alfonse M. D'Amato, Chairman United States Senate Committee on Banking, Housing and Urban Affairs, to The Honorable Abner J. Mikva, White House Counsel (Aug. 9, 1995) (Doc. No. MGSL-FR-00000049).

[192] Letter from Jane C. Sherburne, Special Counsel to the President, to Robert Giuffra, Chief Counsel United States Senate Special Committee to Investigate Whitewater Development Corporation and Related Matters (Sept. 1, 1995) (Doc. Nos. WHV268-DC-00000027 through 28).

[193] Murray 5/17/00 Int. at 1; Letter from Jane C. Sherburne, Special Counsel to the President, to Robert Giuffra, Chief Counsel, U.S. Senate Special Committee to Investigate Whitewater Development Corporation and Related Matters (Sept. 1, 1995) (Doc. Nos. WHV268-DC-00000027 through 28).

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too voluminous to print.[194] Murray explained to this Office that Nemetz did not permit anything to remain in his possession after the conclusion of the search.[195]

As a result of learning the above, this Office requested that the White House produce the Pinnacle Optical Disk containing 1) the imaged hard disk drive created by FBI Special Agent Murray on August 11, 1995 and 2) the hard copy printout of the filtered slack printed by Murray and provided to Nemetz on that date.[196] This Office and the White House Counsel entered into an agreement on July 7, 2000, to allow production and examination of certain computer hard drive records,[197] including the reallocation tapes for Deborah Gorham, Vincent Foster, and a Pinnacle Optical Disk containing the imaged hard drive which was created by FBI Special Agent Thomas R. Murray and provided to Associate White House Counsel Miriam R. Nemetz on August 8, 1995.[198] The review of these records is ongoing; however, it appears that this Office had previously received none of this information.

The White House informed this Office in July 2000 of its inability to locate reallocation

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[194] Letter from Jane C. Sherburne, Special Counsel to the President, to Robert Giuffra, Chief Counsel, U.S. Senate Special Committee to Investigate Whitewater Development Corporation and Related Matters (Sept. 1, 1995) (Doc. Nos. WHV268-DC-00000027 through 28).

[195] Murray 5/17/00 Int. at 1.

[196] Letter from Jay Apperson, Deputy Independent Counsel, to Steven Reich, Senior Associate White House Counsel (June 6, 2000).

[197] Protocol Between the Office of the Independent Counsel and the Executive Office of the President with Respect to the Production of Certain Computer Hard Drive Records and Other Materials Pursuant to Grand Jury Subpoenas (July 7, 2000).

[198] Letter from Miriam R. Nemetz, Associate White House Counsel, to SAC William C. Megary, Federal Bureau of Investigation (Aug. 11, 1995) (Doc. Nos. EL-DC-00000095 through 96); Murray 5/17/00 Int. 1.

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tape #554, which is listed as a backup of Vincent Foster's hard drive.[199] Subsequently, the White House informed this Office on November 15, 2000, that reallocation tape #554 was found in the storage cabinet among the other reallocation tapes.[200] This Office delivered the tape to the FBI Laboratory for fingerprint analysis, and to the FBI's Computer Analysis Recovery Team ("FBI CART") for restoration of the data on the tape on November 16, 2000.[201] The forensic analysis of reallocation tape #554 continues at the time of the filing of this Final Report. The review of data identified as the backup tape of Foster's hard drive appears to have been materials from the Political Affairs Department rather than any work that would have been performed by Foster or anyone else in the White House Counsel's office.

B. Missing Files from Steven Neuwirth's List of Documents in Foster's Office.

On April 24, 1996, this Office identified three files included in Stephen Neuwirth's July 26, 1993 index of Vincent Foster files that were required to be produced to this Office by subpoena, but never were produced.[202] At that time, this Office informed the White House that responsive documents had never been produced and sought information as to the location of these files, including an explanation as to how they may have come to be missing.[203] This Office

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[199] White House Lotus Approach Reallocation Tape Database (Apr. 28, 2000) (Doc. No. V257-00000210).

[200] Easley 11/15/00 Int. at 1.

[201] Letter from J. Keith Ausbrook, Deputy Independent Counsel, to Donald Kerr, Assistant Director Laboratory Division - Federal Bureau of Investigation (Nov. 16, 2000).

[202] Letter from John Bates, Deputy Independent Counsel, to Jane Sherburne, Special Counsel to the President (Apr. 24, 1996). The three files listed on the Neuwirth index that were not produced included: "Deborah Gorham;" "Personal File List;" and "Clinton - Health Issue." Id.

[203] Id.

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renewed its request for information with respect to these missing files on July 20, 2000.[204] The White House responded on August 17, 2000, stating: "Apparently, your office dropped this matter following Mr. Bates' inquiry, and I regret that -- now more than four years later -- I have located no information regarding these files, and can shed no light on this subject."[205] On September 25, 2000, this Office again renewed its long-standing request for information as to the missing files identified on the Neuwirth inventory.[206] No further information regarding these files has been received from the White House by the time of the filing of this Final Report.

V. CONCLUSION

This Office was unable to confirm that the White House had fully complied with lawfully issued subpoenas in the Madison Guaranty/Whitewater matter by the time of the filing of this Final Report. The White House continues to restore backup tapes and continues to perform searches for responsive documents to these subpoenas.

White House Counsel Beth Nolan agreed on November 29, 2000 that the filing of this Final Report will not prevent this Office from seeking compliance with subpoenas related to the Madison Guaranty/Whitewater matter, nor would it prevent this Office from obtaining responsive Madison Guaranty/Whitewater documents that are generated during the

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[204] Letter from Jay Apperson, Deputy Independent Counsel, to Steven Reich, Senior Associate White House Counsel (July 20, 2000).

[205] Letter from Gregory Smith, Associate White House Counsel, to Jay Apperson, Deputy Independent Counsel (Aug. 17, 2000).

[206] Letter from Jay Apperson, Deputy Independent Counsel, to Gregory Smith, Associate White House Counsel (Sept. 25, 2000).

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reconstruction of backup tapes.[207] Further, Nolan agreed that the filing of this Final Report would not prevent this Office from issuing additional subpoenas pursuant to any jurisdictional grants of this Office that remain open.[208]

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[207] Letter from Beth Nolan, White House Counsel, to Robert Ray, Independent Counsel (Nov. 29, 2000).

[208] Id.

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VOLUME IV
DEPARTMENTS & AGENCIES

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PART F

THE DEPARTMENT OF JUSTICE'S HANDLING OF THE RTC CRIMINAL REFERRALS AND THE CONTACTS BETWEEN THE WHITE HOUSE AND THE DEPARTMENT OF THE TREASURY

Chapter 1:

DOJ Handling of the RTC Referrals

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I. INTRODUCTION

The potential involvement of President Clinton with matters in criminal referral C-0004 raised questions about the proper handling of the referral by the Department of Justice. The referral identified him and Mrs. Clinton as potential witnesses to the alleged criminal conduct relating to Madison Guaranty by Jim McDougal.

The delay in full consideration of the referral between September 1992 and the ultimate appointment of a regulatory independent counsel in January 1994 required investigation of whether any action during that time was intended to prevent full examination of the conduct alleged in the referral. Whether before or after the 1992 election of President Clinton, any action that had the effect of delaying or impeding the investigation could raise the question of whether anyone in the Department of Justice unlawfully obstructed the investigation in violation of 18 U.S.C. § 1505.

This investigation examined the conduct and motives of Department of Justice officials in a position to influence the handling of the referral. These officials included President Bush's U.S. Attorney in Little Rock, President Clinton's subsequent appointee as the U.S. Attorney, and officials at the Department of Justice headquarters in Washington D.C. both at the end of the Bush Administration and during the first year of the Clinton Administration.

II. FINDINGS

The Independent Counsel concluded the evidence was insufficient to prove that any Department of Justice official obstructed justice by engaging in conduct intended to delay or impede the investigation of the RTC's criminal referral C-0004. There were numerous delays in

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the handling of the referral -- in part the result of attempts to consider the political sensitivity created by the presence of a named Presidential candidate (and subsequently, President) as a witness, and in part the result of the transition to a new U.S. Attorney and Department of Justice. The Independent Counsel concluded, however, the evidence surrounding the delays failed to substantiate that any of the delays were the result of corrupt intent. Accordingly, the Independent Counsel determined that no prosecutions were warranted.

III. FACTUAL SUMMARY

A. Handling of Criminal Referral No. C-0004 before Election Day, November 3, 1992.

1. Early Notification to FBI-Little Rock about C-0004.

Supervisory Special Agent Steve Irons of the FBI Little Rock field office first learned about Whitewater Development from a March 1992 New York Times article.[1] The article mentioned the McDougal-Clinton business partnership in the Whitewater Development Corporation ("Whitewater Development") and the failure of Madison Guaranty Savings & Loan.[2] About two weeks after the article appeared, Jean Lewis, an RTC Investigator with the RTC's Kansas City office, contacted the FBI in Little Rock and said she was traveling to Little Rock to review Madison Guaranty records and wanted to meet with the FBI agent who worked on the

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[1] Irons 2/14/95 Int. at 1; Jeff Gerth, Clinton Joined S&L Operator in an Ozark Real-Estate Venture, N.Y. Times, Mar. 8, 1992, Section 1, at 1.

[2] Irons 2/14/95 Int. at 1; Jeff Gerth, Clinton Joined S&L Operator in an Ozark Real-Estate Venture, N.Y. Times, Mar. 8, 1992, Section 1, at 1.

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Bureau's previous investigation of the thrift.[3]

Irons asked Lewis why Madison Guaranty was being examined a second time.[4] She replied that she was told by her supervisor to target Madison Guaranty, and that she was pulled off other investigations.[5]

Irons called Clark Walton, Lewis's immediate supervisor in Tulsa, and asked if the RTC was looking at Madison Guaranty.[6] Walton said they were and told Irons there would probably be a referral.[7] Irons told Walton the reason for his question was that he was trying to allocate

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[3] Irons 2/14/95 Int. at 1. Irons already had focused the FBI's Arkansas investigative efforts on failed savings and loans. The two primary investigations he identified involved First Federal Savings & Loan and Savers Savings & Loan, considered priority investigations because of the amount of losses they suffered, the dates of their failures, and the fact that neither had been the subject of prior investigations. Id. at 1-2. By October1992, the FBI in Little Rock estimated that First Federal Savings suffered a loss of $900 million and Savers a loss of $650 million. The loss to Madison Guaranty at that time was estimated as $47.7 million. See Teletype from FBI Little Rock to Director FBI re: James B. McDougal, et al; unsub(s), Madison Guaranty Savings and Loan, Little Rock, Arkansas at 3 (Oct. 16, 1992) (Doc. No. JME-00000023). Madison Guaranty was not a top priority because the loss was comparatively modest, and it was previously investigated. Irons 2/14/95 Int. at 2.

[4] Irons 2/14/95 Int. at 2.

[5] Id. Lewis testified that Madison Guaranty was on the RTC's list of Arkansas institutions to be investigated, but an examination was not actually initiated until the Gerth piece appeared in The New York Times on March 8. "[V]irtually within th[e] week" the article appeared, Lewis was sent to Little Rock to examine Madison Guaranty records to determine whether Whitewater Development had caused a loss to the thrift or received funds it was not entitled to get. Lewis 5/18/95 GJ at 8-12.

[6] Irons 2/14/95 Int. at 2. Irons said his conversation with Walton took place within two weeks of his discussion with Lewis. Id.

[7] Id.

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resources for other major investigations.[8] Walton said the FBI in Little Rock should expect a referral on Madison Guaranty soon.[9]

At some point in May, June, or July 1992, Lee Walters, one of the agents on Irons's squad, told Irons that the U.S. Attorney's Office in Little Rock ("USAO-EDAR") knew about the RTC's interest in Madison Guaranty.[10] Irons had not mentioned the subject to USAO-EDAR, and assumed Lewis contacted that office.[11] In mid-August 1992, Lewis called Irons and told him she had an August 31 deadline to finish the referral.[12]

Irons thought FBI Headquarters in Washington was first provided with background on the upcoming Madison Guaranty criminal referral in an "airtel" that Irons wrote dated August 26, 1992.[13] Irons said FBI policy then required field offices to wait until the RTC sent the criminal referral about a failed thrift before opening a fraud investigation.[14] Irons discussed then-current

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[8] Id.

[9] Id.

[10] Id.

[11] Id.

[12] Id.

[13] Airtel from Little Rock to FBI Headquarters (Aug. 26, 1992) (Doc. Nos. JME-00000498 through 502). Depending on the importance of a matter, communications with FBIHQ could be either by call, airtel or teletype. Pettus 6/6/95 GJ at 15. An airtel was the lowest priority. Id. at 15-16. The August 26 airtel was referenced shortly thereafter in a teletype sent from FBI-Little Rock to FBIHQ. See Teletype sent from FBI-Little Rock to FBIHQ (Oct. 7, 1992) (Doc. No. TTK 00000005).

[14] Irons 2/14/95 Int. at 3.

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and predicted use of resources for financial institution fraud cases.[15] In doing so, Irons included what he learned from Lewis about the anticipated referral involving the Clintons.[16]

2. RTC Criminal Referral C-0004 Arrives in Little Rock.

Madison Guaranty Criminal Referral C-0004 ("C-0004" or the "Referral") arrived at the FBI Little Rock field office and USAO-EDAR September 2, 1992,[17] sent from the RTC's Kansas City office the day before.[18]

C-0004 alleged various crimes at Madison Guaranty, including check kiting and self-dealing.[19] The referral identified James and Susan McDougal and Lisa Aunspaugh as suspects. Witnesses listed included Governor Clinton, Hillary Rodham Clinton, Lieutenant Governor Jim

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[15] Airtel from Little Rock to FBI Headquarters (Aug. 26, 1992) (Doc. Nos. JME-00000500 through 01)

[16] Id. (Doc. No. JME-00000499).

[17] Irons 2/14/95 Int. at 3; Dodson 5/23/95 GJ at 14-15. Irons may have had general conversations with Charles A. ("Chuck") Banks, the United States Attorney for the Eastern District of Arkansas, in which Irons may have mentioned the referral was coming. Irons 2/14/95 Int. at 3. Banks said that he first learned about the referral when Mac Dodson, his First Assistant, mentioned that he had received a criminal referral from RTC Investigator Lewis, or had received a telephone call from her on that subject. Banks 2/14/95 Int. at 1. Banks testified he was "almost sure" he did not hear about the referral before its receipt in his office, because he remembered Dodson saying, "We just got a referral in here, another referral on McDougal." Banks 5/23/95 GJ at 25-26. Dodson testified that he first learned of the referral in September 1992 when it was received in the USAO-EDAR. Dodson 5/23/95 GJ at 13-14.

[18] Letter from L. Richard Iorio, Field Investigation Officer, Resolution Trust Corporation, to The Honorable Charles A Banks, United States Attorney, Eastern District of Arkansas (Sept. 1, 1992) (Doc. No. 006642). In July 1992, after the time of Irons's March 1992 conversations with Lewis, the RTC's Tulsa office was closed and its personnel and records transferred to the RTC's Kansas City office. See Lewis 4/4 -5/94 Fiske Int. at 3-4; Iorio 4/12/94 Fiske Int. at 2.

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Guy Tucker, Stephen A. Smith, and Greg Young.[20]

At the FBI, Irons made a copy of the referral for Special Agent in Charge ("SAC") Don Pettus.[21] Don Whitehead, FBI-Little Rock's Assistant Special Agent in Charge ("ASAC"), was also told about C-0004.[22] Approximately 300 exhibits were included with the referral to USAO-EDAR; the FBI in Little Rock did not receive them.[23] Within a couple of days of receiving the referral Irons spoke with the U.S. Attorney, Charles Banks, who said he did not want any investigative action taken until he discussed the referral with FBI management.[24]

Irons asked Pettus if FBIHQ should be notified.[25] Pettus told Irons to keep quiet about the referral, and that Pettus would handle it.[26] Irons knew that Pettus thought there was little merit to the referral.[27]

Once the referral was received at FBI-Little Rock, a decision had to be made whether to open a case. Once a case was opened, it would be logged into a computer system accessible to

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[19] Faxed first page to RTC Crim. Ref. No. C-0004 (Oct. 6, 1992) (Doc. No. 0000643).

[20] RTC Crim. Ref. No. C-0004 (Aug. 31, 1992) (Doc. Nos. 006643 through 62).

[21] Irons 2/14/95 Int. at 3. Pettus recalled the referral arriving at the Little Rock office, and was sure he perused it. He became knowledgeable about the case through reading the referral and/or through briefings by Irons. Pettus 5/10/95 Int. at 1.

[22] Whitehead 3/1/95 Int. at 1. Whitehead believed he read the referral; he recalled Irons saying that it might have check kiting possibilities about McDougal, but additional work would have to be done to justify opening a new investigation. Id.

[23] Irons 2/14/95 Int. at 3; Banks 5/23/95 GJ at 34.

[24] Irons 2/14/95 Int. at 4.

[25] Irons 6/16/95 Int. at 1-2.

[26] Id. at 2.

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officials at the Department of Justice.[28] Irons also thought the information would be accessible to Congress.[29] Normally the FBI automatically opened a case for an RTC referral, but because of C-0004's sensitivity, it called for special handling.[30]

Pettus did not want to investigate C-0004 unless he had a commitment from the U.S. Attorney in Little Rock.[31] Pettus agreed with the U.S. Attorney that no overt investigation would be conducted until after the presidential election.[32]

Whitehead recalled that Pettus's view was that if a case was opened immediately, there might be leaks about it from the RTC, forcing FBI-Little Rock to respond to inquiries by "neither confirm[ing nor] deny[ing]" an ongoing investigation.[33]

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[27] Id.

[28] Id.

[29] Id. Irons recalled receiving calls from congressional staffers asking about the status of other investigations involving government fraud. Id.

[30] Id. Irons said there were several factors militating against opening a case when the referral was received. See Irons 5/21/96 GJ at 38-41. One was FBI policy to refrain from action before an election that might influence it. Id. at 38. Irons testified that the FBI reviewed the referral and its exhibits to make sure there was nothing requiring immediate attention before the election. Id. at 41.

[31] Pettus 7/14/95 Int. at 1.

[32] Id.

[33] Whitehead 3/1/95 Int. at 1-2.

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3. USAO-EDAR's Early Handling.

Banks had served as U.S. Attorney for the Eastern District of Arkansas since February 1988.[34] He unsuccessfully ran for Congress as a Republican in November 1992.[35] Banks knew President Clinton; he first met him when Clinton ran for Arkansas Attorney General.[36] Banks was not a friend of Clinton's and considered himself opposed to most of Clinton's political positions.[37] In August 1992, President Bush nominated Banks to be a federal judge, which was pending when C-0004 arrived.[38]

Banks said he first heard about the referral from his First Assistant, Floyd "Mac" Dodson.[39] The referral listed a second set of allegations against McDougal from Madison Guaranty's failure.[40] The previous allegations had led to McDougal's prosecution in mid-1990 for other crimes related to the thrift.[41]

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[34] Banks 2/14/95 Int. at 1.

[35] Banks 5/23/95 GJ at 5-6.

[36] Id. at 7.

[37] Id. at 9.

[38] Id. at 68, 71.

[39] Banks 2/14/95 Int. at 1.

[40] Id.

[41] The 1990 McDougal trial was the first savings and loan matter Banks's office tried. Banks 5/23/95 GJ at 21. McDougal, a prominent Democrat, claimed the prosecution was political. McDougal had said the only reason he was indicted was because in 1982, he ran for a congressional seat against a Republican incumbent in the Western District of Arkansas. McDougal lost, and claimed the reason for his 1990 prosecution was the incumbent told Banks to get even with McDougal. Banks 5/23/95 GJ at 23-24; Irons 5/21/96 GJ at 35. Banks denied the allegation. Banks 5/23/95 GJ at 24. Banks, a Republican, did not participate in McDougal's

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Dodson said if he was certain sufficient evidence was present to support allegations in a criminal referral, he usually assigned it to an Assistant U.S. Attorney fairly quickly.[42] If more information was needed, Dodson would ask the appropriate FBI agent to find it before assigning it.[43] Matters involving FBI investigations normally came through Dodson.[44] If a matter was particularly sensitive, he might delay its assignment so that he could determine what information he had, what needed to be done, and the degree of difficulty presented by the case.[45]

If Dodson thought an RTC referral was routine, he assigned it.[46] If the matter was not routine, he consulted with Banks.[47] Once assigned, the referral was logged into the office's computer system.[48] In some cases Dodson assigned matters to himself so that his name was in the system as the contact person.[49] Dodson did not assign C-0004 to an Assistant.[50] Dodson said he left that to Banks, though he would have some input.[51] Dodson said he did not get direction

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trial, instead assigning it to two assistants and taking a hands-off approach to avoid compromising the merits. Banks 2/14/95 Int. at 1; Banks 5/23/95 GJ at 22.

[42] Dodson 2/15/95 Int. at 2.

[43] Id.

[44] Id.

[45] Id.

[46] Dodson 5/23/95 GJ at 9.

[47] Id.

[48] Id. at 9 -10.

[49] Id. at 10.

[50] Id. at 17.

[51] Id.

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from Banks about what to do with C-0004.[52] Linda Ann Newgent, Secretary to the U. S. Attorney, Eastern District of Arkansas, testified that the referral file was never entered into the USAO-EDAR computer system.[53]

Dodson told Banks the referral mentioned the Clintons and Jim Guy Tucker.[54] Banks was curious why the RTC was sending his office material that should have been submitted with the first McDougal prosecution.[55] Banks was troubled by the names of the witnesses and realized the referral was sensitive for that reason.[56] Banks asked Dodson to check with the assistant who had prosecuted the first McDougal trial to find out if C-0004 was new or simply redundant.[57] Dodson asked Sandra Cherry, an assistant in USAO-EDAR, to perform that review because she had been involved in the first McDougal case.[58] Dodson said Cherry quickly responded that C-0004 had new information, but Dodson asked her to take more time to be certain.[59] Dodson said one or two weeks later, Cherry again told Dodson the referral had new information.[60] Cherry disputes

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[52] Id.

[53] Newgent 2/16/95 Int. at 2; Dodson 2/15/95 Int. at 2.

[54] Banks 2/14/95 Int. at 1; Banks 5/23/95 GJ at 26.

[55] Banks 5/23/95 GJ at 27-28.

[56] Id.

[57] Id. at 28-29. Banks testified that he either told Dodson to follow that course, or Dodson told Banks he was going to do so. Id. at 28.

[58] Dodson 2/15/95 Int. at 2.

[59] Id.

[60] Id. at 3.

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that she ever saw C-0004 or that she was ever asked to review it.[61]

Lewis called Dodson a number of times to ask what the office was doing with the case.[62] Although Banks never spoke with Lewis directly, Dodson related the substance of his conversations with Lewis to Banks, and Banks thought Lewis wanted the investigation moved quickly.[63] Banks said his office never handled a referral in that manner.[64] Banks thought the reason for the push was the high-profile witnesses named -- the Clintons in particular -- and that the RTC was angling for an overt investigation before the imminent presidential election because the inquiry would become public.[65] Banks told Dodson that if Lewis wanted to know how the USAO-EDAR was going to handle the case, she should call Banks.[66] Banks said he "never got a call from anybody."[67]

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[61] Cherry 5/9/95 Int. at 2.

[62] Dodson 5/23/95 GJ at 20; Banks 5/23/95 GJ at 29.

[63] Banks 5/23/95 GJ at 29. Banks agreed it was common for investigators to try to sell their own cases. Id. at 33. Because the presidential election was so soon, he thought pushing C-0004 was unwise. Id. at 34. Lewis testified the timing was driven by the March 8, 1992 New York Times article, and delay caused when the RTC shifted her office from Tulsa to Kansas City. Lewis 5/18/95 GJ at 77-80.

[64] Banks 5/23/95 GJ at 29.

[65] Id. at 29-31. Banks said it would soon become public knowledge if his office started issuing grand jury subpoenas in furtherance of an investigation into the referral's allegations. Id. at 31. He testified that at the relevant time there were two newspapers in the area, with a war between them going on. One was defunct by the time of his testimony. He said there were two full-time court reporters on the "federal beat," which worked his hall, as a consequence of which there was no grand jury secrecy. Banks testified that "you could just bet" on word of grand jury subpoenas getting out. Id.

[66] Id. at 29

[67] Id.

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Banks first read the referral "probably in the third week in September [1992] -- probably . . . after about the third or fourth call."[68] He read the document twice but not the exhibits.[69] Banks thought the allegations were against the McDougals and Aunspaugh,[70] and wished he had had the benefit of those facts in 1989.[71] Banks thought "the referral had merit," but was concerned about his office's "limited resources."[72] He saw "innuendo," "accusation," and perhaps "ethical . . . violations or poor judgment" about the witnesses named in the referral.[73]

Banks was concerned about proceeding a second time against McDougal.[74] Banks felt that "another shot at the same person needs to be much stronger and quicker."[75] Banks did not feel there would be any recovery of taxpayers' money associated with the losses at Madison Guaranty, and Banks viewed McDougal as a "fairly miserable figure,"[76] not worth "pil[ing] it on a man who's finished without expecting to get anything but jail time."[77] Banks considered the matter a waste of resources and a "potential embarrassment to the Department of Justice that was

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[68] Id. at 34.

[69] Id. at 34-35.

[70] Id. at 35.

[71] Id. In Banks's words, this time around, "there's more meat in the coconut." Id.

[72] Id. at 35-36.

[73] Id. at 36.

[74] Id. at 37-38.

[75] Id. at 37.

[76] Id. at 38.

[77] Id. at 38-39.

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unnecessary."[78] Banks thought there were "other fish to fry," though he did not rule out the case entirely.[79]

Banks decided that he would open a case on C-0004 after the election on November 3, 1992 limited to Jim McDougal.[80] Banks wanted to "see more substance behind the referral" before going after Susan McDougal and Lisa Aunspaugh,[81] the only other people Banks saw as having any criminal exposure in the referral.[82] Dodson concurred with his boss's assessment of the referral.[83]

4. The September 23, 1992 Meeting in Little Rock.

On September 23, 1992, Banks and Dodson from USAO-EDAR, and Whitehead, Pettus, and Irons from FBI-Little Rock met on the referral.[84] Banks thought the check-kiting allegations were of interest, with Aunspaugh as a possible target.[85] Banks felt the referral gave him no basis

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[78] Id. at 39.

[79] Id.

[80] Id. at 39-40.

[81] Id. at 40-41.

[82] Id. at 37-38, 40-41.

[83] Dodson 5/23/95 GJ at 24-27.

[84] Teletype from FBI-Little Rock to FBIHQ at 10 (Oct. 7, 1992) (Doc. No. TTK-00000014) (mentioning September 23, 1992 meeting among "SAC, Little Rock, and Supervisory Staff" with the United States Attorney); see also Banks 2/14/95 Int. at 4 (placing meeting in late September 1992); Banks 5/23/95 GJ at 43 (acknowledging meeting probably took place on September 23, 1992); Whitehead 3/1/95 Int. at 2; Irons 2/14/95 Int. at 4.

[85] Banks 5/23/95 GJ at 43-44.

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to suspect the Clintons of criminal conduct,[86] and was not inclined to investigate them. [87] Banks made clear he did not want to do anything until after the November 3, 1992 election, except for legal research and a review of the referral's exhibits.[88] His impression was that the FBI officials concurred.[89] Dodson similarly recalled that Banks decided not to do anything until after the election.[90]

Pettus agreed with Banks that the referral had to be approached fairly, and concurred there was no reason to move on it immediately; he also did not want to conduct an overt investigation before the presidential election.[91] Pettus believed there was a consensus that C-0004 would be examined after election day.[92]

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[86] Id. at 44.

[87] Id.

[88] Id. at 45-46.

[89] Id. at 45.

[90] Dodson 5/23/95 GJ at 29. Dodson may have followed up with some legal research by speaking with Fletcher Jackson, an Assistant United States Attorney in EDAR, about the statute of limitations. Id.

[91] Pettus 5/10/95 Int. at 2, 4.

[92] Id. at 4. Irons recalled that at the September 23 meeting, it was decided the FBI would take no additional investigative action pending additional review by the USAO-EDAR. Irons 2/14/95 Int. at 4. The participants also discussed the upcoming presidential election and the importance of keeping the referral on a "need to know" basis. Id. To the best of Irons's recollection, the FBI in Little Rock first learned at this meeting that Banks's office had additional exhibits about the referral. Id. Whitehead had the same recollection. Whitehead 3/1/95 Int. at 2. He also recalled that Banks's office said they had to be careful not to go off "half cocked" and that legal issues such as double jeopardy and the statute of limitations had to be examined because they could preclude future prosecution. Irons 2/14/95 Int. at 4.

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5. Early Action by Officials at Main Justice.

Not long after the referral arrived in Little Rock -- and some weeks before USAO-EDAR officially notified officials at Main Justice of its existence -- high-level Bush Administration officials heard rumors about the referral from other sources. Former Attorney General William P. Barr learned about the possible existence of the referral on September 17, 1992.[93] He had a conversation with Edie Holiday, then serving as Secretary to the Cabinet.[94] Holiday said she wanted to ask Barr something, but she was not sure if it would be appropriate.[95] Barr said she could ask, with the understanding that he would not tell her anything if it was not appropriate.[96] Holiday asked if Barr would be aware of a pending matter in Justice (she may have said it was a criminal referral) about a presidential candidate or a family member of a presidential candidate.[97] Barr said he would if it was pending in the Department of Justice.[98] Holiday said she was talking about a savings and loan matter, and it became clear to Barr she was referring to Governor Clinton.[99] Holiday did not say where she heard the rumor, and Barr did not ask.[100]

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[93] Barr 6/2/95 Int. at 1.

[94] Id.; Holiday 7/28/95 Int. at 1.

[95] Barr 6/2/95 Int. at 1.

[96] Id.

[97] Id.

[98] Id.

[99] Id. at 2.

[100] Id. Holiday did not remember knowing about an RTC criminal referral involving the Clintons. Holiday 7/27/95 Int. at 1. Holiday did not remember seeking Barr out to ask him

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6. A Discreet Search is Conducted by Officials at Main Justice.[101]

Barr was concerned there might be a matter pending in the Justice Department that he was not aware of. He believed it would be damaging to Justice if an attorney at Main Justice or in one of the U.S. Attorney's offices was "hotdogging" a sensitive investigation without his knowledge.[102]

Barr told Ira Raphaelson, the Justice Department's Special Counsel for Financial Institution Fraud, about the rumor.[103] Barr told Raphaelson to try to find out whether the referral existed.[104] Barr did not want anyone in the Justice Department to know he was inquiring about the matter, to avoid the perception that he was trying to interfere with a sensitive case.[105] Barr and Raphaelson agreed to check DOJ's system of Urgent Reports and also to check with FBI

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questions about the referral; she claimed that she did not know of C-0004 when it came out, nor did she know of anyone else who did. Id. at 3.

[101] There is some evidence that at some point, C. Boyden Gray, the White House Counsel, tried to find out about the referral. Albert Casey, Chairman of the RTC, recalled receiving a call from Gray about the referral's status. Casey 7/26/95 Int. at 1. Casey went to William Roelle, Executive Vice President of the RTC, and asked about the status. Id. Roelle told Casey the Clintons were not named as targets, but simply as potential witnesses. Id.; Roelle 2/24/95 Int. at 1-2. Gray called Casey back, and told him to forget about his earlier inquiry. Casey 7/26/95 Int. at 1. Gray did not remember a telephone conversation with Casey, along the lines discussed above. Gray 7/25/95 Int. at 2. He believed he first learned about the referral from Casey, but he thought it may have been at a dinner party. Id. at 1. Gray might also have heard about the referral from a journalist. Id. Gray recalled his impression was that the Clintons were named as witnesses, not targets. Id.

[102] Barr 6/2/95 Int. at 2.

[103] Id.; Raphaelson 3/28/95 Int. at 2-3.

[104] Raphaelson 3/28/95 Int. at 3.

[105] Barr 6/2/95 Int. at 3; Raphaelson 3/28/95 Int. at 3.

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Headquarters ("FBIHQ") because the FBI maintained its own bank fraud investigation tracking system.[106]

Raphaelson contacted FBIHQ in Washington.[107] He likely spoke with Fred Verinder, Deputy Assistant Director of the Criminal Investigative Division.[108] Raphaelson was told that FBIHQ had no information about such a referral.[109] Raphaelson told Barr he found nothing.[110] He asked if Barr had any more details, and Barr said no.[111]

Barr then called Holiday (about one week after their conversation) and told her that her information was wrong.[112] Barr said she replied she was fairly certain there was such a referral.[113]

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[106] Barr 6/2/95 Int. at 3; Raphaelson 3/28/95 Int. at 3.

[107] Raphaelson 3/28/95 Int. at 3.

[108] Verinder 3/14/95 Int. at 1. Raphaelson said he contacted either Verinder or Larry Potts, Assistant Director of the Criminal Investigative Division (see Potts 2/9/95 Int. at 1) or Thomas Kubic, Section Chief, Financial Crimes Section, Criminal Investigative Division. See Kubic 3/8/95 Int. at 1. Verinder recalled hearing from someone that the RTC had a case that had not yet been given to the FBI. Verinder 3/14/95 Int. at 1. He said he could have received that information from Raphaelson, but he did not specifically remember. Id. at 1-2. Kubic recalled that in mid-September 1992, Verinder mentioned that he (Verinder) had had a conversation with Raphaelson; the latter said he was hearing rumors that the RTC was making a criminal referral that mentioned Governor Clinton. Kubic 3/8/95 Int. at 1.

[109] Raphaelson 3/28/95 Int. at 3.

[110] Id.

[111] Id. Barr recalled that Raphaelson got back to him fairly quickly, with negative results. Barr 6/2/95 Int. at 3.

[112] Id.

[113] Id. Barr recalled that he then felt that Holiday had better information than he had. Id. This second telephone call was the last time Barr spoke with Holiday about the referral. Id. at 4.

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Holiday did not remember this second conversation with Barr.[114]

Barr spoke with Raphaelson again.[115] He told Raphaelson the referral may have come from the RTC.[116] Barr told Raphaelson he did not mention the RTC in their first conversation because he was handling the matter delicately.[117] Barr was concerned because the referral had not been entered into DOJ's system.[118] Barr said that if the referral was found, he did not want action on it artificially sped up or slowed down -- it was to be dealt with on its merits and in the normal course.[119] Barr stressed the matter had to be handled discreetly.[120] Barr said he prohibited calls to the U.S. Attorney's Office in Little Rock[121] to avoid the impression the Bush Administration was attempting to influence the election.[122]

Raphaelson recalled that after he first reported no findings to Barr,[123] Barr asked if he was sure there was no case involving the Clintons.[124] Raphaelson said he would contact the FBI again

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[114] Holiday 7/27/95 Int. at 2.

[115] Barr 6/2/95 Int. at 4.

[116] Id.

[117] Id.

[118] Id.

[119] Id.

[120] Id.

[121] Id.

[122] Id.

[123] Raphaelson estimated the time as approximately three weeks later. Raphaelson 3/28/95 Int. at 4.

[124] Id.

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and also have the Executive Office for U.S. Attorneys ("EOUSA") check.[125] Barr agreed, but said there should be no hint that higher levels at Justice were interested.[126]

Raphaelson believed that he contacted Wayne Rich in the EOUSA.[127] He said it is possible he spoke with Doug Frazier, then Associate Deputy Attorney General.[128] Raphaelson trusted both Rich and Frazier to be discreet.[129] He did not give Rich much information, and believed that he may have told Rich that he wanted to know about bank cases in Arkansas. Raphaelson said Rich turned up nothing.[130] At some point Raphaelson told Rich what he was after, but that may have been after he got Rich's answer.[131]

Raphaelson contacted FBIHQ again.[132] He believed he spoke with Verinder, although it could have been Kubic or Potts.[133] Raphaelson may have told Verinder the EOUSA had come up empty.[134]

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[125] When a United States Attorney had a specific case or issue that he or she felt merited the attention of top officials at DOJ, policy dictated that a report on the matter be prepared and forwarded to EOUSA, which would then put a cover Memorandum on it, and forward it to appropriate DOJ officials. Marcovici 1/18/95 Int. at 1.

[126] Raphaelson 3/28/95 Int. at 4.

[127] Id.

[128] Id.

[129] Id.

[130] Id.

[131] Id.

[132] Id.

[133] Id.

[134] Id.

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7. FBIHQ's Efforts to Track Down the Referral.

Verinder asked Kubic to find out if FBI-Little Rock had a criminal referral mentioning Governor Clinton.[135] Either on that day or the next, Kubic asked Ronald Dick, Unit Chief of the Financial Institutions Fraud Unit, if Dick knew of an RTC referral which mentioned Governor Clinton.[136] Dick told Kubic he did not, and Kubic asked Dick to find out if the FBI in Little Rock did.[137]

Kevin Kendrick, a Supervisory Special Agent assigned to the Financial Institutions Fraud Unit at FBIHQ, was responsible for the Little Rock FBI office, so he was told to contact Little Rock.[138] Kendrick thought he called Little Rock on October 6, 1992 and spoke with Irons.[139] FBI-Little Rock faxed Kendrick a copy of C-0004.[140] Kendrick thought that FBI-Little Rock office pointed out it already had told FBIHQ about the referral by Little Rock airtel dated August 26, 1992.[141] Kendrick recalled that once Dick reviewed the referral he remarked, "We're going to

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[135] Kubic 3/8/95 Int. at 1.

[136] Id.

[137] Id.

[138] Id.

[139] Kendrick 3/13/95 Int. at 1; the date of the call is corroborated by an October 7, 1992 teletype, sent from FBI-Little Rock to FBIHQ. See Teletype from FBI-Little Rock to FBIHQ (Oct. 7, 1992) (Doc. Nos. TTK-00000005 through 015).

[140] Kendrick 3/13/95 Int. at 1.

[141] Id. Kendrick specifically remembered trying to find the August 26 airtel at FBIHQ. He did not. Id. Irons said FBIHQ was first provided with background information about the then-anticipated Referral by airtel dated August 26, 1992. Irons 2/14/95 Int. at 3. Irons also recalled speaking with Kendrick on October 6, and faxing a copy of the referral to FBIHQ. Irons

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have to do something with this."[142]

Dick recalled that he called FBI-Little Rock and spoke either with Irons or Whitehead.[143] FBI-Little Rock's initial response was it did not have an ongoing investigation on any RTC criminal referral.[144] Dick recalled that after the initial call to the FBI in Little Rock, he received more information about the RTC Referral, perhaps from Justice.[145] Whatever the new information was (Dick could not remember the details), it prompted him to call Little Rock again to make sure there was no pending investigation out of that office.[146] During this second call, either Irons or Whitehead said FBI-Little Rock had received an RTC referral about Madison

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2/14/95 Int. at 5. Irons said Kendrick said he had just come from a Justice meeting where Justice officials said Little Rock was "just sitting on" a significant savings and loan referral. Id.

[142] Kendrick 3/13/95 Int. at 1-2.

[143] Dick 5/31/95 Int. at 1.

[144] Id. Whitehead recalled that some time in early September to mid-October 1992, he received a phone call from FBIHQ asking whether FBI-Little Rock had an ongoing investigation about the Clintons. Whitehead 3/1/95 Int. at 3. Whitehead replied there was no such ongoing investigation. Whitehead 3/1/95 Int. at 3. He believed that this call was received before FBI-Little Rock officially told FBIHQ by teletype about C-0004. Id. Whitehead either checked or had someone else check his office's indicies for references to criminal investigations involving Governor Clinton, with negative results. Whitehead 7/13/95 Int. at 1. He also remembered, from a contemporaneous conversation he had with Pettus, that Verinder had called Pettus and asked whether Little Rock had opened an investigation. Whitehead 3/1/95 Int. at 3. Whitehead's impression was that Verinder was making inquiries because FBIHQ was picking up reports that something was going on in Little Rock about the Clintons. Whitehead 3/1/95 Int. at 3. Whitehead recalled Pettus was against opening an investigation and was going to "take it up" to FBIHQ. Id.

[145] Dick 5/31/95 Int. at 1.

[146] Id.

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Guaranty mentioning the Clintons.[147] Dick also was told that FBI-Little Rock had sent an airtel to FBIHQ dated August 26, 1992 about the referral, that the Clintons were mentioned, and that FBI-Little Rock was waiting to get the referral from the RTC.[148]

Kubic said FBI-Little Rock told him that it did not have the RTC referral, but was expecting something from the agency.[149] It was possible the Little Rock office may have been asked if it had a pending investigation on a referral, in which case the answer was, "No."[150] Kubic said within a week of the inquiry about the referral, Dick told Kubic the FBI in Phoenix had heard that senior RTC officials might be sitting on a criminal referral mentioning Governor Clinton.[151] FBI Special Agents in Phoenix had received that information from RTC personnel in Phoenix.[152] Kubic believed the FBI in Phoenix sent a teletype to FBIHQ about the information; he also recalled the information appeared to be speculation.[153] Kubic called Whitehead in Little Rock and learned that Little Rock had a copy of an RTC criminal referral.[154] Whitehead told Kubic the referral did not appear very credible; he said it alleged an elaborate check-kiting

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147 Id.

148 Id. at 1-2.

149 Kubic 3/8/95 Int. at 1.

150 Id.

151 Id. at 2.

152 Id.

153 Id.

154 Id.

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scheme, and that its principal subject was Jim McDougal.[155] Whitehead reported that McDougal had been tried and acquitted once before, and was not a particularly good target.[156] Kubic recalled being told the FBI-Little Rock did not receive the supporting documents with the referral.[157] Kubic asked Whitehead to fax a copy of the referral to FBIHQ.[158]

According to Pettus, when an FBI field office receives a sensitive referral it is required to notify Headquarters in Washington, D.C.[159] He recalled notifying Headquarters, but he did not remember when he did so; he did remember receiving a call from Verinder, who "was a little upset."[160] Verinder wanted to know what FBI-Little Rock had told Headquarters about the referral.[161] Pettus said he gave Verinder a detailed background on the first McDougal matter, and said Little Rock had to be careful the second time around because the first trial ended in an acquittal.[162] Pettus said Verinder seemed "generally satisfied" and "basically" in agreement that Little Rock was "proceeding in the right manner."[163]

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[155] Id.

[156] Id.

[157] Id.

[158] Id.

[159] Pettus 6/6/95 GJ at 15.

[160] Id. at 16-17.

[161] Id. at 16.

[162] Id.

[163] Id. at 16-17. Pettus said he did not purposely avoid notifying FBIHQ about the referral because he had a desirable transfer pending in October 1992, and he said he would never have done anything to jeopardize his move. Pettus 7/14/95 Int. at 1. Whitehead did not know why Pettus did not promptly advise FBIHQ about Little Rock's receipt of C-0004. Whitehead

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8. The October 7, 1992 Teletype to FBIHQ from FBI-Little Rock.

FBI-Little Rock sent a teletype to FBIHQ, on October 7, 1992, about C-0004.[164] The teletype summarized the referral.[165] It said the RTC's Kansas City Office had sent Referral C-0004 simultaneously to the FBI and the U.S. Attorney's Office in Little Rock.[166] The referral had documentary exhibits sent to the USAO-EDAR but not the FBI.[167] The October 7 teletype referenced FBI-Little Rock's August 26, 1992 airtel, and said that in that airtel Little Rock had told FBIHQ of the anticipated receipt of C-0004 "INCLUDING GENERAL DETAILS OF THE CRIMINAL ACTIVITY ALLEGED AND EXPECTED REFERENCES TO BILL AND HILLARY CLINTON AND JAMES AND SUSAN MCDOUGAL."[168] The teletype noted McDougal's previous November 1989 indictment on bank fraud charges for his activities at Madison Guaranty.[169] It also pointed out that McDougal was acquitted.[170] The teletype characterized the referral as describing "PROBABLE CHECK KITING ACTIVITY" for the

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7/13/95 Int. at 1. Pettus generally maintained contact with Headquarters about significant matters and usually told FBIHQ by phone, carefully following the appropriate chain of command. Whitehead 7/13/95 Int. at 2.

[164] Teletype from FBI-Little Rock to FBIHQ (Oct. 7, 1992) (Doc. Nos. TTK-00000005 through 15).

[165] Id.; see also Whitehead 3/1/95 Int. at 2 ("FBIHQ had been provided a summary of the MGSL referral as well as a copy of it").

[166] Teletype from FBI-Little Rock to FBIHQ at 2 (Oct. 7, 1992) (Doc. No. TTK-00000006).

[167] Id.

[168] Id.

[169] Id.

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benefit of the McDougals.[171] The teletype said the referral's "SUPPOSITION" that others benefited from the alleged kiting scheme did "NOT APPEAR TO BE FACTUALLY SUPPORTED BY THE DETAILS THAT FOLLOW WITHIN THE REFERRAL."[172]

The teletype noted the referral did not allege the Clintons made or endorsed any checks, and alleged McDougal's signature was "FORGED OR SIGNED" by Lisa Aunspaugh or Susan McDougal. The teletype said the referral noted a "PROBABILITY" that certain of McDougals' business partners (meaning the Clintons) knew about relevant checking account activity, but that there was insufficient evidence to prove they had the required criminal knowledge.[173] The Clintons were categorized as witnesses.[174] The teletype concluded with the following two paragraphs:

> ON SEPTEMBER 23, 1992, SAC, LITTLE ROCK, AND SUPERVISORY STAFF MET WITH USA [U.S. ATTORNEY CHARLES BANKS] TO DISCUSS THIS MATTER. IT WAS THE OPINION OF USA, EDAR, THE INFORMATION CONCERNING THE CHECK KITE WAS OF POSSIBLE INTEREST, WITH A[U]NSPAUGH AS A POSSIBLE TARGET. IT WAS ALSO THE OPINION OF USA THE ALLEGED INVOLVEMENT OF THE CLINTONS IN WRONGDOING WAS IMPLAUSIBLE, AND HE WAS NOT INCLINED TO AUTHORIZE AN INVESTIGATION OR RENDER A POSITIVE PROSECUTION OPINION. IT WAS ALSO NOTED A COMPLETE AND FACTUAL DETERMINATION OF WHAT TRANSPIRED IN ANY FACET OF THE REFERRAL WOULD TAKE SOME TIME. USA, EDAR, OPINED THE CORRECT COURSE OF ACTION WAS FOR HIM TO HAVE

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[170] Id.

[171] Id. at 5-6.

[172] Id. at 6.

[173] Id. at 3-11.

[174] Id. at 7.

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LEGAL RESEARCH CONDUCTED ON THE STATUTE OF LIMITATIONS ON THE VARIOUS APPLICABLE BANK FRAUD STATUTES AND TO COMPLETE AN IN-DEPTH ANALYSIS OF THE VOLUMINOUS EXHIBITS ANCILLARY TO THE REFERRAL. ALTHOUGH HE STATED AN INTENTION TO PROVIDE LITTLE ROCK WITH COPIES OF THE EXHIBITS, NONE HAVE BEEN RECEIVED AS OF INSTANT DATE.

ACCORDINGLY, LITTLE ROCK HAS TAKEN NO INVESTIGATIVE ACTION ON THIS MATTER PENDING A PROSECUTIVE OPINION FROM USA, EDAR. ON OCTOBER 7, 1992, THE FIRST ASSISTANT U.S. ATTORNEY ADVISED THE LITTLE ROCK SQUAD SUPERVISOR THE USA INTENDED TO ADVISE THE DEPARTMENT OF JUSTICE OF THIS MATTER DUE TO ITS SENSITIVE NATURE.[175]

9. FBIHQ Told Officials at Main Justice of C-0004.

Verinder contacted Raphaelson and told him the referral existed, the FBI in Little Rock had it, and that FBIHQ was obtaining a copy.[176] Raphaelson told the Attorney General.[177] Barr was critical of the way Banks handled the referral, and felt it undercut the Attorney General's responsibility to ensure referrals were appropriately handled, and not delayed or pushed for political reasons.[178]

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[175] Id. at 10-11.

[176] Raphaelson 3/28/95 Int. at 4. Raphaelson testified that he was pretty certain the response from FBIHQ came from Potts. See Raphaelson 6/6/95 GJ at 22. Raphaelson recalled his FBIHQ contact was unhappy with the field office for its delay in notifying Washington about the referral. See Raphaelson 3/28/95 Int. at 4 (Verinder was "'hot' and unhappy"); Raphaelson 6/6/95 GJ at 22 (Potts expressed a "general sense of chagrin and displeasure that the referral had not been disclosed from Arkansas to the FBI Headquarters in a timely fashion").

[177] Raphaelson 6/695 GJ at 22-23.

[178] Barr 6/2/95 Int. at 5. In Barr's view, Banks had already affected the referral by holding it. Id. Barr also said in appropriate cases, he had responsibilities relating to the appointment of independent counsels and Banks's conduct undermined the Attorney General's statutory duties in

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10. USAO-EDAR Officially Notifies Officials at Main Justice about C-0004.

When the RTC sent C-0004 to Little Rock, the U.S. Attorneys' Manual required U.S. Attorneys' offices to notify the EOUSA in Washington about high-profile or sensitive cases so that it could notify the Attorney General, Deputy Attorney General, and appropriate Assistant Attorney General.[179] On receipt of such a notification, the EOUSA would prepare a DOJ "Urgent Report"[180] to give senior Justice officials information about high-publicity matters in case they received questions.[181] At the time of C-0004, the EOUSA was preparing about five to ten urgent reports per month.[182]

Banks knew about the notification procedure for sensitive cases.[183] He did not send the referral to Main Justice before October 6, 1992 because he felt that he "needed to do [his] duty and [his] responsibility; that [he] didn't feel the necessity to just jump up and send [the referral] up there until [he] thought there was merit to the accusations or there was something where [he] needed help."[184]

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that area. Id. Raphaelson shared the sentiment that Banks's conduct precluded Raphaelson from carrying out his statutory responsibility. See Raphaelson 6/6/95 GJ at 33.

[179] The types of cases subject to the reporting rule included, "[a]llegations of improper conduct by . . . a public official, or a public figure," and "[i]ssues or events that may be of major interest to the press." United States Attorneys' Manual, Title 1 § 1-10.230 (Oct. 1, 1990).

[180] United States Attorneys' Manual, Title 1 § 1-10.231 (Oct. 1, 1990).

[181] Henneman 5/25/95 GJ at 5-6.

[182] Id.

[183] Banks 5/23/95 GJ at 52-53.

[184] Id. at 53.

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Dodson caused referral C-0004 to be faxed to the EOUSA on October 6, 1992.[185] During his grand jury appearance, when Dodson was asked why the USAO-EDAR waited for several weeks to send the referral on to Washington, he said he "[didn't] really have a reason for it."[186] He said he probably just did not remember to do it for some time.[187] Dodson added that he "wanted to make sure that it was not going to be just automatically declined through -- you know, if it was old information."[188]

Raphaelson recalled that about the same time that Verinder told Raphaelson about the referral, the EOUSA received a phone call from USAO-EDAR.[189] The EOUSA was told something to the effect that the USAO-EDAR had a case EOUSA might be interested in, but the USAO did not know why.[190] The representative of the USAO told the Executive Office there might be a requirement that USAO contact EOUSA, but the caller did not know.[191] Raphaelson

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[185] Dodson 2/15/95 Int. at 3-4; Dodson 5/23/95 GJ at 30-34; Henneman 7/25/94 Fiske Int. at 1; Henneman 5/25/95 GJ at 4-5. Cover Letter from L. Richard Iorio, RTC Field Investigations Officer, to Charles A. Banks, U.S. Attorney for the Eastern District of Arkansas, (Sept. 1, 1992) (Doc. No. 007084) and RTC Crim Ref. No. C-0004 (Aug. 31, 1992) (Doc. Nos 007090 through 7108); Letter from Mac Dodson, First Assistant U.S. Attorney, to Donna Henneman, Ethics Program Manager, EOUSA (Oct. 6, 1992); Fax cover sheet from Mac Dodson, First Assistant U.S. Attorney to Donna Henneman, Ethics Program Manager, EOUSA (Oct. 6, 1992) (Doc. No. 007087).

[186] Dodson 5/23/95 GJ at 32.

[187] Id.

[188] Id.

[189] Raphaelson 3/28/95 Int. at 5.

[190] Id.

[191] Id.

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believed that Rich of the EOUSA confirmed there was a reporting requirement.[192] Raphaelson thought he saw a copy of the referral before the telephone call from the USAO-EDAR.[193]

11. The October 7, 1992 "Urgent Report".

After getting the referral, the EOUSA prepared an "Urgent Report."[194] The document was written by Donna Henneman, the Ethics Program Manager in the EOUSA's Legal Counsel's office.[195] The report attached a copy of C-0004, and was sent from Laurence McWhorter, Director of the EOUSA, to Attorney General William P. Barr, Deputy Attorney General George S. Terwilliger III, and Associate Attorney General Wayne A. Budd.[196] Copies went to Assistant Attorney General (Criminal Division) Robert S. Mueller III, and to Paul McNulty, Director of DOJ's Office of Policy and Communications.[197] Dodson was listed as the follow-up contact in

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[192] Id.

[193] Id.

[194] Urgent Report, United States Attorney Eastern District of Arkansas (Oct. 7, 1992) (Doc. No. 006641). However, there was evidence that it was created on October 6, 1992, but dated the next day because it was delivered following the close of business on October 6. Westbrook 1/20/95 Int. at 3.

[195] Henneman 7/25/94 Fiske Int. at 1.

[196] Urgent Report, United States Attorney Eastern District of Arkansas (Oct. 7, 1992) (Doc. No. 006641).

[197] Id. Raphaelson was not certain if McNulty knew about the referral; it is possible that his copy of the Urgent Report was retrieved. Raphaelson 3/28/95 Int. at 8. Raphaelson also did not think that Wayne Budd knew about the referral. Id. Budd said he did not remember seeing the referral but may have been at staff meetings where it was discussed. Budd 7/26/95 Int. at 2. Terwilliger, Mueller, and Dan Levin were all aware of the referral at this time. See Terwilliger 6/7/95 Int. at 1-2 (first learned of C-0004 some time after its submission and before the 1992 presidential election; not sure that he ever saw the October 7 Urgent Report); Mueller 3/27/95 Int. at 1, 3 (first learned of potential criminal problems with Madison Guaranty and the possible

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the USAO-EDAR.[198]

The Urgent Report said: "It is the belief of the U.S. Attorney's office that further investigation into this matter is warranted."[199] Banks did remember saying that to the EOUSA.[200] Dodson did not remember making any such statement to anyone in the EOUSA.[201] Banks said that he did not disagree to the extent it applied to the McDougals and Aunspaugh.[202]

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involvement of the Clintons in the Fall of 1992; saw the October 7, 1992 Urgent Report); Levin 6/2/95 Int. at 1 (fairly certain that he learned of C-0004 from Raphaelson, some time before the 1992 election, and he saw a copy of the referral at some point, probably after he learned of it).

[198] Urgent Report, United States Attorney Eastern District of Arkansas (Oct. 7, 1992) (Doc. No. 006641).

[199] Id. Henneman typed the Urgent Report, but did not know who told her to put the quoted statement in the document. Henneman 5/25/95 GJ at 7. Normally, the relevant United States Attorney's Office would send the EOUSA a case synopsis, but in the case of C-0004, that was not done; the USAO-EDAR simply sent a copy of the referral. Id. at 8.

[200] Banks's best recollection is that he told Dodson to call Rich at the EOUSA about the referral. Banks 2/14/95 Int. at 4. Even so, he admitted that he then felt the allegations against the McDougals and Aunspaugh merited additional investigation "in due time." Banks 5/23/95 GJ at 79. He testified that he did not think the allegations against the witnesses merited issuing grand jury subpoenas at that point. Id.

[201] Dodson 5/23/95 GJ at 35-37.

[202] Banks 5/23/95 GJ at 79-80. E-mail from Laurence McWhorter, the Director of the EOUSA, to Ira Raphaelson, Special Counsel for Financial Institution, Fraud (Oct. 8, 1992) (Doc. No. 007214) stating in part: "Mac Do[d]son . . . called my folks on the 6th to say that he'd been sitting on the 'referral' for six weeks and wondered if he should let us know something. . . . He said that he thought some further investigation was needed"); see also Dodson 5/23/95 GJ at 37-38 (when shown the October 8, 1992 McWhorter e-mail, Dodson still could not remember saying that further investigation was warranted but assumed the allegations against McDougal would take more investigation).

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12. The October 8, 1992 Meeting at Main Justice.

On October 8, 1992, a meeting about the referral was held in the office of Bob Mueller, the Assistant Attorney General for the Criminal Division. Raphaelson, Potts, Kubic, Verinder, Kendrick, and Dick attended.[203]

Mueller's best recollection was the USAO-EDAR had not proceeded on C-0004, and the FBI was concerned not enough was being done.[204] He also got the sense the FBI in Little Rock was not happy with the USAO's pace.[205] Mueller said the referral should be given appropriate and timely -- not extraordinary -- attention.[206] Mueller thought someone had spoken with the attorney assigned to the matter in USAO-EDAR and determined the AUSA thought it was being properly handled.[207] He vaguely recalled the AUSA mentioned that McDougal was previously

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[203] See Mueller 3/27/95 Int. at 2 (recalled a meeting in his office with Potts and others from DOJ and the FBI, whose names he could not recall); Potts 2/9/95 Int. at 1 (recalled an early October 1992 meeting at DOJ with other FBI personnel, and with Mueller, Raphaelson, "and others from the DOJ"); Kubic 3/8/95 Int. at 3 (recalled an October 8, 1992 meeting at DOJ attended by Mueller, Raphaelson, Kendrick, Verinder); Verinder 3/14/95 Int. at 2 (did not specifically remember the meeting, but was sure that if there was a meeting at DOJ about C-0004, he was there; he went to DOJ frequently and had frequent meetings with Raphaelson); Kendrick 3/13/95 Int. at 2 (recalled meeting at the DOJ about C-0004 along with Mueller, Raphaelson, Verinder and Dick); Dick 5/31/95 Int. at 2 (recalled that in the time frame he learned that the FBI in Little Rock had received a referral about Madison Guaranty and the Clintons, he attended a meeting in Mueller's office about the referral); Raphaelson 3/28/95 Int. at 8 (did not specifically remember meeting about C-0004 on October 8, 1992, but he was then spending a great deal of time with Mueller).

[204] Mueller 3/27/95 Int. at 2.

[205] Id.

[206] Id.

[207] Id.

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tried and acquitted, and that many records had to be reviewed on C-0004.[208] He also recalled the upcoming election was not to be an excuse to stall or push the referral's handling.[209]

Raphaelson did not specifically remember the October 8 meeting, but did remember telling the FBI -- either Kubic or Verinder -- that C-0004 was to be handled according to normal procedures.[210] He also remembered telling the FBI to make sure it agreed with USAO-EDAR's position on the referral.[211]

Potts remembered Mueller said the referral should be handled normally.[212] He also recalled that Justice officials at the meeting felt that more information was needed to decide what should be done.[213] They wanted to know what the FBI knew or what it could find out to help make a decision.[214]

Kubic recalled that during the meeting, the FBI passed on the information it had about the referral, that the Clintons were mentioned as witnesses, and the Bureau had none of the supporting documents.[215] The FBI decided the case should be handled like any other; the Little Rock Division would review the relevant supporting documents, obtain the opinion of the U.S.

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[208] Id.

[209] Id. at 2-3.

[210] Raphaelson 3/28/95 Int. at 8.

[211] Id.

[212] Potts 3/2/95 Int. at 1.

[213] Id.

[214] Id.

[215] Kubic 3/8/95 Int. at 3.

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Attorney, and then advise FBIHQ of the results.[216] Mueller and Raphaelson both agreed.[217] The meeting lasted for thirty minutes or less, and Kubic did not think that Justice officials put pressure on the FBI.[218]

Kendrick recalled that Verinder and the Justice officials present at the meeting talked about the timing of the referral, and Mueller said C-0004 should be treated like any other case.[219] Verinder told the Justice officials the FBI was not going to do anything until FBI-Little Rock had a chance to go through the exhibits.[220] Verinder did not think the Justice people present were trying to pressure the FBI into opening a case right away.[221] He had the opposite impression.[222] The Justice representatives emphasized the matter should be handled in the regular course like any other RTC criminal referral.[223] The conclusion reached was that the FBI should conduct a limited investigation and guard against leaks in light of the election.[224]

Dick recalled that during the October 8 meeting Mueller said that C-0004 was to be treated like any other RTC criminal referral.[225] He said no one from the Justice Department tried

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[216] Id.

[217] Id. at 3-4.

[218] Id. at 4.

[219] Kendrick 3/13/95 Int. at 2.

[220] Id.

[221] Id.

[222] Id.

[223] Id.

[224] Id.

[225] Dick 5/31/95 Int. at 2.

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to tell the FBI what to do, beyond requesting a review of the referral to determine whether it had any substance.[226]

13. Mueller Sent a Copy of the Referral to Keeney.

On October 9, 1992, Mueller sent a buck slip to Jack Keeney, a career official in the Department of Justice who was the Deputy Assistant Attorney General for the Criminal Division.[227] Mueller wrote : "Let's discuss after you have read."[228] Mueller said copies of the referral and the October 7 Urgent Report were probably attached.[229] Mueller wanted to let Keeney know what had happened in the meeting with the FBI officials.[230] At his grand jury appearance, Mueller agreed the referral "was not necessarily in Mr. Keeney's bailiwick" because financial institution fraud was not part of Keeney's responsibilities.[231] But Keeney was in charge of the Public Integrity Section, and he had been in the Department for decades with experience on matters that could cause scandals.[232] Mueller considered him wise, and would seek him out even on matters not part of Keeney's responsibilities.[233] Mueller did not remember discussing the

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[226] Id.

[227] Copy of buck slip from Robert Mueller, Assistant Attorney General or the Criminal Division to Jack Keeny, Deputy Assistant Attorney General for the Criminal Division Ref. Discuss C-0004 after Mueller read (Oct. 9, 1992) (Doc. No. 007157).

[228] Id.

[229] Mueller 5/25/95 GJ at 26.

[230] Mueller 3/27/95 Int. at 5.

[231] Mueller 5/25/95 GJ at 26.

[232] Id. at 27.

[233] Id.

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matter with Keeney in response to his October 9 note, but he guessed that "in all probability" he did.[234]

Keeney did not remember the October 9 note from Mueller, but he had no reason to doubt he got it.[235] Keeney recalled hearing about the case at about that time.[236] He assumed he heard about it because he discussed it with Mueller within a day or so of the note.[237]

14. The October 9, 1992 Teletype to FBI-Little Rock from FBIHQ.

After the October 8 meeting, Potts ordered that FBI-Little Rock be told to review the referral and discuss it with USAO-EDAR.[238] Unit Chief Dick told Kendrick what instructions should be sent to the FBI in Little Rock.[239] Kendrick drafted a teletype that was sent to Little Rock on October 9, 1992:[240]

> AS DISCUSSED . . ., AN FIF [FINANCIAL INSTITUTION FRAUD] INVESTIGATION IS WARRANTED IN CAPTIONED MATTER. THEREFORE, LITTLE ROCK SHOULD INITIATE A LIMITED INVESTIGATION AIMED AT DETERMINING THE EXTENT OF VIOLATIONS AS ALLEGED IN THE [RTC'S] CRIMINAL REFERRAL FORM, DATED 9/1/92.

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[234] Id.

[235] Keeney 4/7/95 Int. at 2.

[236] Keeney 7/6/95 GJ at 4.

[237] Id. at 4-5.

[238] Potts 2/9/95 Int. at 2.

[239] Kendrick 3/13/95 Int. at 2-3.

[240] Teletype drafted by Kendrick sent to Little Rock (Oct. 9, 1992) (Doc. Nos. KBK 0000040 through 41); see also Administrative Note/Tickler Count from Kendrick sent to Little Rock attachment to teletype (Oct. 9, 1992) (Doc. No. KBK 0000039).

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LITTLE ROCK SHOULD OBTAIN FROM THE U.S. ATTORNEY AND REVIEW THE DOCUMENTS REFERENCED IN THE CRIMINAL REFERRAL. IN ORDER TO PROTECT THE IDENTITIES OF PASSIVE INVESTORS AND/OR WITNESSES, LITTLE ROCK SHOULD NOT CONDUCT ANY OVERT INVESTIGATION SUCH AS WITNESS INTERVIEWS OR SERVING OF GRAND JURY SUBPOENAS AT THIS TIME. IN ADDITION, THE DOCUMENTS SHOULD BE AFFORDED APPROPRIATE SECURITY SO AS TO MAINTAIN THE PRIVACY OF THE WITNESSES.

LITTLE ROCK IS REQUESTED TO SUBMIT RESULTS OF THIS LIMITED INVESTIGATION AND ANTICIPATED INVESTIGATIVE AND PROSECUTIVE PLANS BY COB, 10/16/92, TO FBIHQ . . . ATTENTION: SSA KEVIN B. KENDRICK.[241]

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[241] Cover sheet and page 2 of Teletype drafted by Kendrick sent to Little Rock (Oct. 9, 1992) (Doc. Nos. KBK 0000040 through 41) (upper case in original). The substance of the October 9, 1992 teletype was set out in its first two pages. A third page (Doc. No. KBK 0000039) bears the heading "Administrative Note/Tickler Count." This note provides additional corroboration for the October 8, 1992 meeting and the substance of the discussion that took place then. It reads, in pertinent part, as follows: "ON 10/8/92, BUREAU OFFICIALS MET WITH ASSISTANT AG ROBERT MUELLER AND SPECIAL COUNSEL IRA RAPHAELSON, OF THE DOJ. AAG MUELLER ADVISED THAT DOJ DID NOT HAVE ENOUGH INFORMATION AT THIS TIME TO RENDER ANY KIND OF OPINION AND THAT FBIHQ SHOULD MAKE A DETERMINATION REGARDING AN INVESTIGATIVE COURSE OF ACTION. AAG MUELLER ADDED THAT THIS MATTER SHOULD NOT BE TREATED ANY DIFFERENTLY THAN ANY OTHER SIMILAR FIF INVESTIGATION ADDRESSED BY THE FBI AND DOJ." Mueller said this text reflects what he recalled about the October 8 meeting. Mueller 3/27/95 Int. at 4. He had no intent to have the FBI exert any pressure about a Madison Guaranty investigation. Id. The statement up front in the October 9 teletype, to the effect that an "investigation is warranted," was not a part of his instructions about the handling of the referral. Mueller 3/27/95 Int. at 5. He did not remember using the terminology "limited investigation," which also was part of the teletype. Id. He also said the teletype was generally consistent with his memory of the October 8 meeting. Id. at 5. The FBIHQ's instructions to the FBI in Little Rock to review the referral's supporting documents was an acceptable procedure to Mueller so long as such a review was standard practice. Id. Potts supported that point, and said a review of the referral's supporting documentation was part of normal procedure. Potts 2/23/95 Int. at 1. Raphaelson said the administrative notes to the teletype were not inconsistent with his impression at the time that the FBI wanted to know from Mueller and Raphaelson whether, as prosecutors, they felt C-0004 had merit. Raphaelson 3/28/95 Int. at 9. The FBI would have been

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After he gave his directions, Potts spoke to Don Pettus, the FBI Special Agent in Charge in Little Rock.[242] Potts believed this followed Pettus's receipt of a teletype containing instructions on C-0004.[243] According to Potts, Pettus was unsure that the FBI should do anything with the referral, and that it might not be significant enough to justify the opening of any investigation.[244] Potts told Pettus to have someone look at the referral's facts, review the exhibits, inform the U.S. Attorney of the findings, and then get the USA's decision, as in any case.[245] Potts recalled concern about the presidential election, so Potts directed that no overt action be taken.[246] Pettus was reluctant to take any action then, but wanted the work done.[247] Pettus agreed to proceed.[248]

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told that more information was needed before such a decision could be made. Id. He opined the information in the October 9 teletype and the administrative notes following it easily could have been paraphrased from statements made by Mueller or Raphaelson. Id. He also believed the message would have been conveyed that no one in the higher-ups of Justice would make a determination on the referral until after the presidential election in November. Id. at 10. Raphaelson recalled there was about three weeks until the election, and he then believed the referral could be dealt with after the election if Governor Clinton lost. Id. If he won, then the responsibility for the referral could be shifted to the new Administration's appointees at DOJ. Id.

[242] Potts 2/9/95 Int. at 2. Potts could not remember if he phoned Pettus or vice versa. Id. The phone call took place either on the same day that Potts issued his instruction that Little Rock was to review the referral, or shortly thereafter. Id.

[243] Id.

[244] Id.

[245] Id.

[246] Id.

[247] Id.

[248] Id.

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Verinder recalled a conference call with Pettus.[249] Potts, Verinder, and another FBI official who Verinder could not remember were present.[250] Verinder said the conversation became heated.[251] Pettus was troubled by FBIHQ's instructions about C-0004, but Verinder could not remember why.[252] Verinder recalled that Potts asked Verinder and the other official to leave the room so that he could speak to Pettus.[253] Verinder did not learn about the details of the private conversation between Potts and Pettus.[254]

15. Little Rock Reacted to the October 9, 1992 Teletype.

Pettus had a telephone conversation with Verinder about the first McDougal prosecution.[255] Pettus also recalled another conversation with Potts.[256] Pettus believed Potts wanted to be certain he had all the facts, so Pettus discussed the first McDougal matter.[257] There had been a full investigation, and a full trial ending in McDougal's acquittal.[258] Pettus said his office was "coordinating fully with [Mr. Banks's] office" and that fairness was their concern.[259]

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[249] Verinder 3/14/95 Int. at 2.

[250] Id.

[251] Id.

[252] Id.

[253] Id.

[254] Id.

[255] Pettus 6/6/95 GJ at 16.

[256] Id. at 26.

[257] Id.

[258] Id.

[259] Id. at 26-27.

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He testified that as a result, FBIHQ sent the October 9 teletype, requesting a "limited" or "preliminary" inquiry, basically a determination that the referral alleged criminal violations.[260] In Pettus's view, FBIHQ may have been upset because it thought Little Rock was doing nothing.[261] Once Pettus explained the background of the matter, that the USAO had everything, and the presidential election was coming up, he thought Headquarters was more sympathetic and agreed that only a limited investigation should be done.[262]

16. The Irons/Hall Review of the Referral and its Exhibits.

Following receipt of the instructions from FBIHQ to conduct a limited review of the referral, Irons and Gretchen Hall, a financial analyst assigned to the FBI's Little Rock office, went to the USAO-EDAR to examine the referral's exhibits.[263] Banks had the exhibits brought to a conference room, along with several Whitewater newspaper articles.[264] Irons and Hall spent two days going over the material, documenting their review.[265]

Their conclusion was there appeared to be a case worthy of additional investigation against the McDougals.[266] Although the Clintons were mentioned in the referral, there was no

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[260] Id. at 27.

[261] Id. at 27-28.

[262] Id. at 27-31.

[263] Irons 2/14/95 Int. at 5; Hall 2/16/95 Int. at 1.

[264] Hall 2/16/95 Int. at 1.

[265] Id.

[266] Id.

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evidence they were involved in any crimes.[267] The Clintons did not sign any checks and did not have signatory authority on a number of relevant Whitewater accounts.[268] Irons and Hall concluded that an additional investigation was needed.[269]

Hall recalled that Banks did not participate in the review and it was her impression that no one, other than Banks, had reviewed the exhibits yet.[270] After Irons and Hall completed their review, they met with Banks, who said the timing of the referral made him suspect a political agenda.[271] Banks did not say who he suspected.[272] Irons said to Banks that he felt that additional documents were needed and he wanted to initiate a discreet follow-up investigation.[273]

The exhibits remained in Banks's office, and the FBI did not make copies.[274] Hall prepared a memorandum summarizing their conclusions.[275]

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[267] Id.

[268] Id.

[269] Id. at 1-2.

[270] Id. at 2.

[271] Id.

[272] Id.

[273] Id.

[274] Id.

[275] Id. The Memorandum, dated October 15, 1992, was directed to Irons, and its stated purpose was to "assess the merits" of C-0004. Her conclusion, in part, was there was a relationship between Bill and Hillary Clinton, Jim Guy Tucker, and the McDougals but that "the [R]eferral and exhibits are weak in pointing out whether this relationship is of a criminal nature warranting further investigation. It is apparent, however, there exists a strong case against Jim and Susan McDougal for their misconduct and misuse of position with regard to the institution, for who better than they could have controlled the situation?" White Water Development Corporation Transaction Statement attachment to Memo from Gretchen Hall, Financial Analyst,

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17. The October 14, 1992 Follow-Up Meeting with Banks.

Because of the October 9, 1992 teletype, there was a follow-up meeting with Banks some time before October 16, 1992.[276] The participants included Banks, Dodson, Pettus, Whitehead, and Irons.[277]

Banks recalled another meeting with FBI-Little Rock -- though not when -- where Pettus demonstrated a "sense of urgency."[278] Banks characterized Pettus normally would not get personally involved unless he "had an extreme interest."[279] Banks said "all of sudden, we had this FBI pressure that something had to be done by October 16th."[280] Banks thought it was the witnesses rather than McDougal who were creating the interest.[281] He assumed there had been contact between the FBI and Main Justice, though no one told him this.[282] Banks sensed that an "investigation, analysis, or decision" was being done on a time frame set by FBIHQ, and it would

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FBI to Steven Irons, Special Agent FBI (Oct. 15, 1992) (Doc. No. JME-00000068). Hall said after she wrote the Memorandum, any decisions about what was to be done with C-0004 rested with the Department of Justice, the United States Attorney's Office in Little Rock, and FBIHQ. From her perspective, the matter simply died as far as any follow-up work by the FBI. She did not do any additional Madison Guaranty or McDougal-related work until several months later (possibly April 1993) when an auxiliary lead came in from FBI-Newark. Hall 2/16/95 Int. at 2.

[276] Irons placed the meeting "on or about" October 14, 1992. Irons 2/14/95 Int. at 5.

[277] Id. Whitehead recalled there was a follow-up meeting involving Banks and Pettus, but he could not remember attending it. Whitehead 3/1/95 Int. at 2.

[278] Banks 5/23/95 GJ at 82.

[279] Id. at 83.

[280] Id.

[281] Id.

[282] Id.

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lead to "doing something right now with the grand jury."[283]

Banks recalled that sometime between October 9 and 16, Irons and Hall came to the USAO and reviewed the exhibits.[284] He thought he reviewed the referral again as well.[285] Banks thought from speaking with Pettus that "people [were] trying to get me to issue . . . subpoenas before this election," and he testified that he would have resigned before doing that.[286] Banks agreed the only one who "seemed" to be asking him to issue subpoenas was Lewis.[287] He did not remember Pettus or Irons asking him to do so.[288]

Dodson recalled a meeting with Pettus and Irons at some point between October 6 and 16, 1992, and thought Whitehead was also present.[289] Dodson was present for only part of the meeting, but he recalled FBI-Little Rock indicating that it had been asked to go forward with an investigation on the referral.[290] There was a general discussion of concern that the case might be jeopardized if subpoenas were issued at that time.[291] Dodson said that FBI-Little Rock did not think the eve of the election was the right time to start moving the investigation.[292] Dodson

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[283] Id. at 83-84.

[284] Id. at 84.

[285] Id. at 85.

[286] Id. at 87-88.

[287] Id. at 88.

[288] Id.

[289] Dodson 5/23/95 GJ at 39-40.

[290] Hall 5/23/95 GJ at 40.

[291] Dodson 5/23/95 GJ at 40.

[292] Id. at 40-41.

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thought that FBI-Little Rock wanted the USAO to say, "Don't do it" if FBIHQ ordered them to go forward.[293]

Dodson said the referral had been in Little Rock for some time, and there had been no criticism of the way it was being handled.[294] The tone of this meeting, however, indicated that FBI-Little Rock wanted to report immediately.[295] Dodson felt the local FBI agents would not have behaved that way unless "somebody above them" was pressuring them.[296]

Pettus remembered speaking with Banks about communications received from FBIHQ.[297] Pettus believed that Banks was concerned with the timing of the referral.[298] Pettus was "talking to our people [i.e., FBIHQ]" and Pettus "assumed that [Banks] was probably talking to his . . . counterparts."[299] Pettus agreed that before the election, Little Rock should not issue subpoenas and conduct witness interviews.[300] He was fairly sure a consensus existed that C-0004 would be examined again following the election.[301]

Irons told the others he thought the referral warranted additional investigation of the

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[293] Id. at 41.

[294] Id.

[295] Id.

[296] Id.

[297] Pettus 6/6/95 GJ at 32.

[298] Id.

[299] Id.

[300] Pettus 5/10/95 Int. at 4.

[301] Id.

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McDougals and Aunspaugh.[302] Irons agreed with Banks and Pettus that investigation should wait until after the November 1992 election.[303] Irons noted that Madison Guaranty had failed some five or six years before, so there was no need to open an investigation immediately.[304]

18. The October 16, 1992 Teletype from FBI-Little Rock to FBIHQ.

On October 16, 1992, FBI-Little Rock sent a teletype to FBIHQ.[305] The teletype referred to Headquarters' October 9, 1992 teletype to Little Rock and to a telephone call on October 9 from the "SAC, Little Rock" (i.e., Pettus) with FBIHQ.[306] The teletype read as follows:

> AS DISCUSSED IN REFERENCED TEL[EPHONE] CAL[L], LITTLE ROCK WILL NOT INITIATE AN INVESTIGATION OF CAPTIONED MATTER [I.E., MADISON GUARANTY AND JAMES MCDOUGAL].
>
> DURING THE PERIOD OCTOBER 9-16, 1992, U.S. ATTORNEY (USA), EASTERN DISTRICT OF ARKANSAS . . . AND WHITE-COLLAR CRIME SUPERVISOR AND FINANCIAL ANALYST, FBI, LITTLE ROCK, CONDUCTED AN EXTENSIVE REVIEW OF THE REFERRAL AND ALL OF THE APPROXIMATELY 300 EXHIBITS FURNISHED TO USA BY RESOLUTION TRUST CORPORATION (RTC). USA CONCURS THERE IS ABSOLUTELY NO FACTUAL BASIS TO SUGGEST CRIMINAL ACTIVITY ON THE PART OF ANY OF THE INDIVIDUALS LISTED AS WITNESSES IN THE REFERRAL. USA FEELS THE LIMITED DATA FURNISHED MAY INDICATE CRIMINAL ACTIVITY ON THE PART OF CAPTIONED SUBJECTS, JAMES AND SUSAN MCDOUGAL, AND LISA A[U]NSPAUGH. HOWEVER, USA IS HOLDING PROVISION OF A PROSECUTIVE OPINION

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[302] Irons 2/14/95 Int. at 5.

[303] Id.

[304] Id.

[305] Teletype from FBI-Little Rock to Director of FBI, Referencing Teletype from FBI-Little Rock to Director of FBI, October 9, 1992 (Oct. 16, 1992) (Doc. Nos. JME-00000021 through 24).

[306] Id. at 1 (Doc. No. JME-00000021).

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REGARDING THOSE SUBJECTS IN ABEYANCE.[307]

The teletype summarized prior communications about the prior indictment, trial, and acquittal of McDougal, and said he had no assets to pursue.[308] It noted the available facts indicated that one or more federal violations might exist, but the USAO was "CONSIDERING THE LIKELIHOOD OF PROVING SUCH VIOLATIONS AND THE MANPOWER OPPORTUNITY COST TO OTHER PRIORITY INVESTIGATIONS" of investigating McDougal again.[309] Finally, the October 16 teletype mentioned that FBI-Little Rock was awaiting referrals from the RTC about two large thrift failures in Arkansas – Savers Savings and First Federal, whose losses were $650 million and $900 million. The teletype said the loss at Madison Guaranty was $47.7 million.[310] FBI-Little Rock asked Headquarters to contact the RTC and ask it to prepare referrals on Savers Savings and First Federal, both of which were viewed by Little Rock as having "much greater prosecutive potential" than Madison Guaranty.[311]

Pettus said the teletype accurately reflected his feelings about the referral then.[312] The "extensive review" of the referral and its exhibits constituted, in Pettus's view, the "limited" investigation that FBIHQ had directed in its October 9 teletype.[313] Banks mostly agreed with the

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[307] Id. at 1-3.

[308] Id.

[309] Id.

[310] Id.

[311] Id.

[312] Pettus 5/10/95 Int. at 4.

[313] Pettus 6/6/95 GJ at 35.

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teletype's assessment of his attitude then.[314] He said if the language meant that he was withholding judgment on whether to move against McDougal until after the election, then "that's what I was saying to them."[315]

19. FBIHQ Received the October 16 Teletype.

Potts recalled receiving the October 16 teletype stating the USAO-EDAR's view that the referral did not warrant opening an investigation then.[316] Potts said according to usual procedures, the FBI would not open an investigation if the U.S. Attorney did not deem it appropriate.[317] Potts understood from Pettus that even if USAO-EDAR said an investigation was appropriate, it would have been put behind other priority matters pending in the Little Rock Division.[318] Potts also recalled Pettus strongly agreeing with Banks's position that the referral might warrant an investigation, but should not be initiated then.[319] For his part, Potts's position was the Bureau would conduct an investigation if needed, but he wanted an assessment of the referral done in a way that did not negatively affect anyone without cause.[320]

After the teletype, Potts's position was that the FBI would take no action on the referral until after the election; he did not think the USAO-EDAR had declined the matter, and believed

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[314] Banks 5/23/95 GJ at 85-96.

[315] Id. at 89-90.

[316] Potts 2/9/95 Int. at 2-3.

[317] Id. at 3.

[318] Id.

[319] Id.

[320] Id.

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the referral would be revisited.[321] Verinder agreed with the October 16 teletype, and thought the U.S. Attorney had courage and did the right thing by not pushing an investigation before the election.[322] Dick said once Little Rock's October 16 teletype was received, the matter was in a holding pattern until follow up after the election.[323] Kubic thought the teletype was an accurate assessment of the referral.[324]

20. FBIHQ Transmitted a Copy of the October 16 Teletype to Main Justice.

Potts wrote out a buck slip dated October 19, 1992 transmitting a copy of the October 16 teletype to Mueller at Main Justice.[325] Potts wrote: "I have discussed with [SAC Pettus] and agree with the contents of this teletype [i.e.] no investigation is justified at this time."[326]

Mueller thought the matter was being appropriately handled.[327] His rationale was that the teletype said the FBI had reviewed the matter; the FBI in Little Rock was comfortable with the decision that no additional investigative activity was warranted then; and the U.S. Attorney in Little Rock was also comfortable with that stance.[328] Mueller was sure that if Raphaelson had not

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[321] Potts 2/9/95 Int. at 3-4.

[322] Verinder 3/14/95 Int. at 3.

[323] Dick 5/31/95 Int. at 2.

[324] Kubic 3/8/95 Int. at 4.

[325] Buck Slip from SA Potts, FBI to Mueller referencing teletype from Little Rock (Oct. 19, 1992) (Doc. No. 000502).

[326] Id. Mueller did not remember receiving the slip, but he said he "undoubtedly did." Mueller 5/25/95 GJ at 30.

[327] Mueller 5/25/95 GJ at 33.

[328] Id.

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received a copy of Potts's slip, then he would have told Raphaelson about the results or made certain that Raphaelson got a copy.[329]

Raphaelson recalled "something like" Potts's October 19 buck slip, and that at some point he saw a copy of FBI-Little Rock's October 16 teletype.[330] He was not satisfied because he was distrustful of FBI-Little Rock for having withheld information from FBIHQ.[331] He testified there was nothing for him to do then because he did not feel he should put his judgment in conflict with FBI-Little Rock until after the election.[332]

21. Banks's October 16, 1992 Letter.

Banks wrote to Pettus at the FBI in Little Rock on October 16, 1992.[333] Banks wrote he was following up on his "previous meeting" with Pettus.[334] Banks restated his "serious reservations" about prosecuting the individuals listed in C-0004. [335] Banks opined there was no case provable beyond a reasonable doubt against any of the witnesses, though Banks said they may have exhibited "poor judgment, possible conflicts of interest or ethical infractions."[336] Banks

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[329] Mueller 5/25/95 GJ at 34.

[330] Raphaelson 6/6/95 GJ at 46-47.

[331] Id. at 47-48.

[332] Id. at 48.

[333] Letter from Charles A. Banks, United States Attorney Eastern District of Arkansas to Mr. Don Pettus, Special Agent in Charge, FBI-Little Rock (Oct. 16, 1992) (Doc. Nos. 007088 through 89). The letter indicates that it was dictated on October 14, 1992. See id. at 1.

[334] Id.

[335] Id.

[336] Id.

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identified the McDougals and Aunspaugh as the only individuals "worthy of possible deliberation for investigation."[337] Banks expressed doubt about going forward in light of McDougal's previous acquittal, his then-current ill mental health, and the low probability of recovering any of Madison Guaranty's losses.[338] Banks continued:

> I am now advised that you have been ordered to do an immediate review to determine if in[v]estigation is warranted. As part of same, you are required to send a prospective proposal for such investigation by Friday, October 16, 1992. Such an order does not apply to this office.
>
> However, I do believe it might be helpful to reiterate what I have told you previously. Neither I personally nor this office will participate in any phase of such an investigation regarding [C-0004] prior to November 3, 1992. You may communicate this orally to officials of the FBI or you should feel free to make this part of your report.[339]

Banks said the referral was an attempt to influence the election.[340] He said it was "inappropriate" for him to participate in such an investigation, and that doing so would amount to "prosecutorial misconduct . . . detrimental to the Department of Justice, FBI, this office and to the President of the United States."[341]

Banks's letter concluded:

> In due time, I will be happy to meet with you to discuss a limited examination and [the] possibility of proving some of the allegations regarding Mr. and Mrs. McDougal and A[u]nspaugh. In the event I conclude that their case

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[337] Id.

[338] Id.

[339] Id.

[340] Id.

[341] Id.

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should be declined, which at this point is a distinct possibility, the DOJ can certainly override that decision and commit Department of Justice personnel and resources to both the investigation and prosecution of the case.[342]

Banks had the impression that Pettus was being ordered to do something overt before the election, and he wanted no part of that.[343] He agreed there was nothing wrong with doing an "immediate review," but he testified that he understood Pettus's orders differently then.[344] He thought that such a review had been done.[345] Banks later said he may have "miscommunicated."[346] He said the referral had been at Main Justice since October 6, and he had heard nothing.[347]

Banks sent a copy of his October 16 letter to Henneman at the EOUSA in Washington.[348] Banks felt if he was doing anything wrong on the referral, then he would have heard something from Main Justice. Banks said if the "hot-button line" (the urgent reporting system) worked as intended he would get a response back in a hurry.[349] He did not.[350]

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[342] Id.

[343] Id.; Banks 5/23/95 GJ at 90-99.

[344] Banks 5/23/95 GJ at 96-97.

[345] Id.

[346] Id. at 95-96.

[347] Id. at 97.

[348] Copy of October 16, 1992 transmittal letter from Charles A. Banks, United States Attorney, Eastern District of Arkansas to Donna Henneman, Executive Office United States Attorney, Ref. RTC Referral No. C0004 (Oct. 16, 1992) (Doc. No. 000091).

[349] Banks 5/23/95 GJ at 100.

[350] Id.

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22. Main Justice Received Banks's October 16 Letter.

A copy of Banks's October 16 letter arrived at Main Justice on October 20, 1992.[351] The EOUSA prepared an Urgent Report, to "update" the prior October 7.[352] Barr could not remember the October 20 Urgent Report, but he did remember hearing about a letter in which Banks criticized the FBI's handling of the referral.[353]

Mueller knew that he saw the October 20 Urgent Report with the attached Banks letter at some point.[354] He took no action on the letter.[355] He thought that Main Justice had done the right thing, and that Banks was "overreacting," because to Mueller's understanding, no one was pushing for an investigation.[356] Other than that, Mueller agreed with Banks's posture.[357]

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[351] Copy of October 16, 1992 transmittal letter from Charles A. Banks, United States Attorney, Eastern District of Arkansas to Donna Henneman, Executive Office United States Attorney, Legal Counsel, date stamped October 20 Ref. RTC Referral No. C0004 (Oct. 16, 1992) (Doc. No. 000091).

[352] Urgent Report transmitting to listed recipients a copy of Banks's October 16 letter and a copy of the earlier, October 7 Urgent Report (Oct. 20, 1992) (Doc. No. 007153).

[353] Barr 6/2/95 Int. at 6-7. Barr was upset because at no time did he, or anyone working for him, suggest to Banks that USAO-EDAR should do something with the referral that would be considered improper. Id.

[354] Mueller 5/25/95 GJ at 35.

[355] Id. After reviewing the October 16 Banks letter, Mueller testified that in retrospect, he was not sure if he ever saw the teletype from FBIHQ to FBI-Little Rock directing that a preliminary investigation be undertaken (the October 9 teletype); in his view, that directive went beyond what he recalled discussing at his meeting with FBI officials. Id.

[356] Id. at 36.

[357] Id.

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23. Mueller's October 23, 1992 Note to Keeney.

On October 23, 1992, Mueller sent the October 19 Potts buck slip and a copy of FBI-Little Rock's October 16 teletype to Keeney. Accompanying those documents was a buck slip from Mueller to Keeney that read: "FYI."[358] Mueller sent this material to Keeney to keep him apprised so Mueller could get his advice in the future if any additional steps were taken.[359]

Keeney recalled the note.[360] He endorsed on the buck slip's bottom the notation: "I don't see us as involved at this point. Bureau's position is reasonable."[361] He sent the note and accompanying materials to Gerald McDowell, the Chief of the Fraud Section, for the latter's information.[362]

24. The Period between October 23 and the Election.

This Office interviewed Mueller about the reasons why Main Justice took no action during October 1992. He said the referral was within the jurisdiction of USAO-EDAR, and nothing had happened to trigger Main Justice's involvement.[363] The matter had not progressed

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[358] Buck slip from Bob Mueller, Assistant Attorney General, Criminal, to John B. Keeney, Deputy Assistant Attorney General Criminal Division, DOJ, FYI (Oct. 23, 1992) (Doc. No. 000500). See Mueller 5/25/95 GJ at 36-37.

[359] Mueller 5/25/95 GJ at 37.

[360] Keeney 4/7/95 Int. at 3.

[361] Buck slip from Bob Mueller, Assistant Attorney General, Criminal Division, to John B. Keeney, Deputy Attorney General Criminal Division, DOJ, FYI (Oct. 23, 1992) (Doc. No. 000500).

[362] Id.; Keeney 4/7/95 Int. at 2. Although McDowell did not remember seeing the note, he recalled seeing the October 16 teletype at some point. McDowell 5/12/95 GJ at 19-20.

[363] Mueller 3/27/95 Int. at 7.

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enough to require Main Justice's approval to proceed.[364] Mueller viewed his role as making certain the matter was being appropriately handled, and the referral's naming of the Clintons as witnesses did not alter that approach.[365] He wanted to avoid any appearance that the Justice Department was improperly involved.[366] Once he was satisfied the matter was being handled properly, his involvement was over.[367]

B. Post-Election Handling of the Referral.

1. The Referral's Status in USAO-EDAR from November 3, 1992 to January 27, 1993.

Banks testified that after the November election, he started making plans to return to private practice.[368] He assumed that if the referral had merit, it would be taken up by Main Justice.[369] He did not think he assigned the referral for action in his office.[370] He did not give a specific reason for not assigning it other than "the same sense of sensitivity" that existed before the election.[371] Banks said he heard nothing from either the FBI or the Justice Department, and he was working on other matters, so the referral "was just sitting there pending."[372]

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[364] Id.

[365] Id. at 6.

[366] Id.

[367] Id.

[368] Banks 5/23/95 GJ at 103-04.

[369] Id. at 105.

[370] Id.

[371] Id. at 105-06.

[372] Id. at 106.

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Banks believed that if "somebody" needed to move forward with an investigation, that was something that he would not be allowed to do, and he would have asked to be recused "due to his position" and because he was going to leave his post.[373] Banks still had a nomination to the federal bench pending in the Senate and felt with President Clinton in office, moving forward on C-0004 would have appeared politically vindictive.[374]

Banks thought C-0004 was Main Justice's case after the referral and his letter had been sent to the EOUSA.[375] He insisted he believed that once he sent the referral to Washington via the "hot button" route, given the allegations against the witnesses (including the Clintons), "the roof would come off," and he would hear "something back in a hurry."[376] Instead, he was met with "dead silence," which indicated to him there was no urgency.[377] Banks did not believe Main Justice could have interpreted his prior actions and correspondence to mean that USAO-EDAR would move on C-0004 after the election.[378]

Dodson knew he also would be leaving because of the election results, and he did not see any urgency to moving forward on C-0004 when he could not finish it.[379] Dodson also thought

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[373] Id. at 108-09.

[374] Id. at 107-08.

[375] Id. at 106-07.

[376] Id. at 110, 112.

[377] Id. at 110-12.

[378] Id. at 113.

[379] Dodson 2/15/95 Int. at 7; Dodson 5/23/95 GJ at 52-53.

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that Justice's silence indicated that Justice agreed with the USAO's position.[380] He also thought his office had a conflict, in the sense that proceeding on the referral would appear like "one last blow at Clinton."[381] He did not think the referral would be left for handling in the hands of the USAO-EDAR; he thought the Justice Department would take up the referral, or a special prosecutor would be appointed.[382]

2. Main Justice's Posture on the Referral from November 3, 1992 to January 27, 1993.

After the November 1992 election, Barr felt that both the FBI and career professionals in the Criminal Division of the Justice Department were aware of the referral and would insure that it was properly handled.[383]

Raphaelson also did nothing about the referral after the election. No one at Justice ever contacted him for a briefing on significant matters when he left his position as Special Counsel.[384] He did not contact Banks because he thought a call from him to USAO-EDAR would prompt

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[380] Dodson 2/15/95 Int. at 8.

[381] Dodson 5/23/95 GJ at 53.

[382] Id. at 52-53. The FBI Little Rock also was under the impression the referral had been set aside by Main Justice. See Irons 2/14/95 Int. at 6 (Irons heard nothing about the referral and believed that DOJ was reviewing it; he received no additional instructions about C-0004 from DOJ or USAO-EDAR and considered it a "dead issue").

[383] Barr 6/2/95 Int. at 7. Barr appointed Daniel Levin, his Chief of Staff, to coordinate the transition. Id. Levin did not brief the transition team about C-0004, and knew of no one who did. Id.

[384] Raphaelson 6/6/95 GJ at 71-72.

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Banks to charge that Main Justice was attempting to politicize the matter.[385] Mueller did not remember anything that happened on the referral from after election to when he left the Department of Justice on January 19, 1993.[386]

3. Banks's January 27, 1993 Recusal Letter.

On January 27, 1993, Banks sent a letter to the EOUSA saying his office had a "conflict of interest" on C-0004, asking to be recused from the matter, and asking for decisions about its "investigation, indictment, prosecution or declination" be made by the Department of Justice.[387] He also noted that his resignation as U.S. Attorney was effective March 1, 1993.[388] Banks said he sent the letter following a call to USAO-EDAR from the RTC where the RTC asked how it should respond to a request for documents on the referral.[389] Banks's letter read:

> RTC's contact with us was to determine the position of this office regarding their response to the [media Freedom of Information Act] request. Specifically, RTC

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[385] Id. at 63-64, 72.

[386] Mueller 5/25/95 GJ at 37-38. For several months following the election, FBIHQ had nothing to do with any investigation involving Madison Guaranty. Later in 1993, there was a renewed interest in the thrift arising from Little Rock's separate investigation about David Hale, which originated from an FBI-Newark lead. See Potts 2/9/95 Int. at 5; Verinder 3/14/95 Int. at 4; Kubic 3/8/95 Int. at 5; Kendrick 3/13/95 Int. at 4; Irons 2/14/95 Int. at 6-7.

[387] Letter from Charles A. Banks, United States Attorney, Eastern District of Arkansas to Ms. Donna Henneman, Office of Legal Counsel, Executive Office for United States Attorneys (Jan. 27, 1993) (Doc. Nos. 007116 through 17).

[388] Id.

[389] Id. Dodson said Lewis from the RTC had called him about the media request. Dodson 5/23/95 GJ at 55-56. He thought she was using the FOIA request as a way to find out what was going on with the referral. Id. at 56. Dodson told Banks about the Lewis query. Id. at 57; see Banks 5/23/95 GJ at 117; see also Lewis 5/18/95 GJ at 23-24 (recalling contact with Dodson about the FOIA request, on January 7, 1993).

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wanted to know if a production of referral documents would affect our investigation.

The purpose of this letter is to clarify any possible confusion.

First, we have no investigation ongoing. Second, we have informed RTC of this and further suggested they should follow the appropriate FOIA law in responding to the request. I believe this RTC inquiry makes it appropriate for me to advise you as to the present status of the . . . Referral.

Our position as related in the enclosed [copy of Mr. Banks's October 16, 1992 letter to Mr. Pettus] is self-explanatory. As previously indicated, it seems prudent that a limited preliminary investigation of allegations pertinent to Mr. and Mrs. McDougal and Ms. A[u]nspaugh should be considered. The taking of 302's from these individuals should determine whether there is merit to substantiate further investigation.

I believe this office has a conflict of interest in conducting an investigation or presenting an indictment against these individuals. Previous prosecution of Mr. McDougal and two other defendants resulted in a not guilty verdict. Several allegations suggesting political prosecutions were made during the trial. These were patently false but a second investigation/prosecution could easily give the appearance of inappropriate motivation by this office.[390]

At that point, with his judicial nomination still pending, Banks felt it would look "even worse" for him to start pushing an investigation of C-0004 before leaving office.[391] He testified that in lay language, he was trying to tell Main Justice:

Whatever you folks are supposed to be doing under this referral service, this hot-button service, if you're not doing it, wake up.

I'm telling you again, we don't have an investigation going. This referral is

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[390] Letter from Charles A. Banks, United States Attorney, Eastern District of Arkansas to Ms. Donna Henneman, Office of Legal Counsel, Executive Office for United States Attorneys (Jan. 27, 1993) (Doc. Nos. 007116 through 17).

[391] Banks 5/23/95 GJ at 117.

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basically holding, and you need to tell me what you want to do about it.

That was during the interim. Now, I'm telling you as far as I'm concerned, I've got a conflict. You need to come on and do something with this.

Your silence is confusing.[392]

Banks testified that he did not seek recusal before January 27, 1993 because he assumed that if Main Justice and the FBI truly wanted to move on C-0004, he would have heard something long before.[393]

4. Banks Spoke with His Successor about C-0004.

Banks recommended to Justice that Richard Pence, an assistant in his office, be appointed to serve as Interim U.S. Attorney for the Eastern District of Arkansas following Banks's departure.[394] Banks recalled talking with him generally about C-0004.[395] Dodson recalled giving Pence an "update," about a number of cases, including C-0004, "just to let him know what was going on."[396] Pence recalled that shortly before Banks and Dodson left the USAO-EDAR, one or the other told Pence the RTC had referred a matter on Madison Guaranty and that Banks had recused and referred the matter to Justice.[397] Dodson did not say the matter had been declined.[398]

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[392] Id. at 120-21.

[393] Id. at 121.

[394] Id. at 124-25.

[395] Id. at 125.

[396] Dodson 5/23/95 GJ at 68.

[397] Pence 5/12/95 GJ at 5.

[398] Id. at 5-6.

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Pence testified that they did not show him any documents about the referral.[399]

C. Main Justice's Handling of Banks's Recusal Request.

1. Initial Handling of Banks's Recusal Request.

On February 9, 1993, Anthony Moscato (then serving as the Director of the EOUSA), sent a memorandum on Banks's recusal to Stuart Gerson, then the Acting Attorney General, through Douglas Frazier, the Principal Associate Deputy Attorney General.[400] The memorandum summarized the nature of the matter, and attached copies of Banks's October 16, 1992 letter, his January 27, 1993 letter seeking recusal, the October 7 and 20, 1992 Urgent Reports, and the referral.[401]

By memorandum dated February 18, 1993, Frazier sent the recusal package for "review and recommendation" to Keeney, the Acting Assistant Attorney General for the Criminal

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[399] Id. at 6.

[400] Memo for Stuart M. Gerson, Acting Attorney General, through Douglas N. Frazier, Principal Associate Deputy Attorney General, from Anthony C. Moscato, Director, Executive Office for United States Attorney, Subject: Recusal by the United States Attorney's Office for the Eastern District of Arkansas on a Resolution Trust Corporation Referral (Feb. 9, 1993) (Doc. Nos. 006671 through 72). The memorandum was prepared by Robert Marcovici, a Senior Attorney Advisor in the Office of Legal Counsel, EOUSA. Marcovici 1/18/95 Int. at 1, 2. The memorandum initially was typed on February 4, and then retyped February 5, 1993, indicating that perhaps some changes were made either by Moscato, or by Deborah Westbrook, another attorney in the EOUSA's Office of Legal Counsel. S. Johnson 1/10/95 Int. at 2. The memorandum left the office on February 9. Id.

[401] Memo for Stuart M. Gerson, Acting Attorney General, through Douglas N. Frazier, Principal Associate Deputy Attorney General, from, Anthony C. Moscato, Director, Executive Office for United States Attorney, Subject: Recusal by the United States Attorney's Office for the Eastern District of Arkansas on a Resolution Trust Corporation Referral (Feb. 9, 1993) (Doc. Nos. 006671 through 72).

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Division.[402] Keeney sent the package to the Fraud Section.[403]

2. Handling of the Recusal Request by the Fraud Section.

Once in the Fraud Section, Gerald McDowell, the Section Chief, assigned the matter to Mark MacDougall, a trial attorney in the section.[404] MacDougall's understanding was that he was to review C-0004 and recommend whether it merited going forward; and to look at the documents in the package forwarded by Keeney and determine if the information met the Department's standards for opening an investigation.[405] He testified that he was not asked to examine Bank's recusal issue.[406]

McDowell said the Fraud Section did not receive many recusal requests.[407] If there was some question about the need for recusal, then the section might look at the merits of the substantive case and do an analysis, as happened with the referral and the Banks recusal request.[408] McDowell felt there was no basis for Banks's recusal, but the merits of C-0004 were

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[402] Memo to John C. Keeney, Acting Assistant Attorney General, from Douglas N. Frazier, Associate Deputy Attorney General, Ref. Recusal by the U.S. Attorney's Office for the Eastern District of Arkansas on a Resolution Trust Coroporation Referral (Feb. 18, 1993) (Doc. No. 001986).

[403] Keeney 7/6/95 GJ at 11-12.

[404] MacDougall 2/3/95 Int. at 1. There was some testimony that George Allen Carver, the Section's Principal Deputy Chief, made the assignment. McDowell 7/19/94 Int. at 2 (believes he asked Carver to assign the matter for analysis to a staff attorney); Carver 7/6/95 GJ at 33 (sure that McDowell made assignment, but Carver would have been in the process).

[405] MacDougall 2/3/95 Int. at 1-2; MacDougall 5/30/95 GJ at 66-67.

[406] MacDougall 5/30/95 GJ at 67.

[407] Id.

[408] Id. at 21.

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examined so McDowell could answer any questions he might receive from his superiors.[409]

3. MacDougall's February 23, 1993 Memorandum.

MacDougall remembered that around February 18, 1993, he was in the Fraud Section's Washington offices, and McDowell called him over and gave him the referral, asking if he would review it.[410] MacDougall had never received such an assignment before.[411] MacDougall believed he got the assignment because he was "walking down the right or wrong corridor on the right or wrong day."[412] MacDougall said he worked on his project over the weekend and gave it to

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[409] McDowell 7/19/94 Int. at 2. When MacDougall was assigned to analyze the referral, he had been in the Fraud Section for two years. MacDougall 2/3/95 Int. at 1. Although officially assigned to Main Justice in Washington, he spent most of his time regularly commuting to Dallas, Texas where he served as a trial attorney with the Dallas Bank Fraud Task Force. From September 1992 through January 1993, he was involved in the trial of several bank fraud cases in Dallas. MacDougall 2/3/95 Int. at 1. In January 1993, he was involved in seeking and returning an indictment in a Dallas bank fraud case, and also was asked to travel to Boston, Massachusetts to review some investigations pending there. MacDougall 2/3/95 Int. at 1.

[410] Id. February 19, 1993 was a Friday; MacDougall believed that he started the assignment that weekend and took it home with him. Id. There is some evidence the recusal package was not received in the Fraud Section until February 22, 1993, in which case MacDougall received the assignment no earlier than four days after he believed he did. See Correspondence Tracking System Status/Actions, Record Update, (Doc. No. 014577); see also Letter to Kenneth W. Starr, Esquire, Office of Independent Counsel from G. Allen Carver Jr., Fraud Section's Principal Deputy Chief, Referencing the Office's handling of Mr. Carver's Grand Jury Appearance at 3 (July 17, 1995) (stating that Criminal Division's case tracking system indicated the recusal request was received in the Fraud Section on February 22, 1993). If that is correct, then MacDougall's memorandum, dated February 23, 1993, was produced in one day. See S. Rep. No. 104-280, at 171 (1996) (noting that MacDougall memorandum was produced in a day).

[411] MacDougall 5/30/95 GJ at 18.

[412] Id. McDowell said he discussed the assignment with Carver, and the matter was given to MacDougall because of the latter's experience and that fact that MacDougall was soon to leave DOJ and had the time to perform the work. McDowell 7/19/94 Int. at 2; see

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McDowell's secretary on February 23 or 24, 1993.[413] He testified that he spent eight to twelve hours on the project.[414]

MacDougall reviewed only documents he was in possession of: the referral itself (including the RTC's September 1, 1992 transmittal letter accompanying the referral), Banks's October 16, 1992 letter to Pettus, and Banks's January 27, 1993 recusal letter to the EOUSA.[415] He did not review any of the referral's exhibits, and had no knowledge of them.[416] He did not attempt to contact any investigators acquainted with the matter -- either at the RTC or the FBI -- and did not contact the U.S. Attorney's Office in Little Rock.[417] He did not review the exhibits, because: "I was asked to review what was in the package, and there were no exhibits in the package."[418] He said he did not contact any of the investigators familiar with the referral, because that would have been beyond the scope of his assignment:

> The assignment I had been given was, as I understood it, very specific, to review the Referral. I had not been directed or authorized to conduct an investigation, and I was confident had I asked to do so that that was beyond what the Fraud Section had been asked to do. For me to have gone outside of that channel and to

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also McDowell 5/30/95 GJ at 48 (MacDougall was one of the Fraud Section's "best prosecuting attorneys"). Carver testified that MacDougall was bright and had a banking background, and was a reasonable choice to examine a referral that spoke of banking transactions. Carver 7/6/95 GJ at 44.

[413] MacDougall 2/3/95 Int. at 2; MacDougall 2/10/95 Int. at 1.

[414] MacDougall 5/30/95 GJ at 24.

[415] MacDougall 2/3/95 Int. at 3.

[416] MacDougall 5/30/95 GJ at 30.

[417] Id. at 28-29.

[418] Id. at 88.

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> have, essentially, begun my own investigation by contacting the RTC and the agents and so forth would have run well afoul of what I had been asked to do, and I did not do that for that reason.[419]

McDowell testified that MacDougall's authority was not so restricted.[420] Carver supported MacDougall's understanding: MacDougall was to review what he had and that was it.[421]

MacDougall produced a five-page, single-spaced memorandum summarizing the results of his analysis of C-0004.[422] The memorandum gave a detailed summary of the referral's factual allegations.[423] In the "Analysis" section MacDougall agreed the referral provided "substantial factual support for the assertion that Mr. and Mrs. McDougal's conduct may have constituted a breach of fiduciary duty, abuse of position, and self-dealing."[424] MacDougall concluded the referral failed to provide "factual allegations sufficient to establish the elements of any of the criminal statutes used in the prosecution of bank fraud cases."[425]

MacDougall's "Recommendation" section read:

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[419] Id. at 29-30.

[420] McDowell 5/30/95 GJ at 35-36.

[421] Carver 2/1/95 Int. at 2 (had MacDougall asked, Carver would have told him to review what he had); Carver 7/6/95 GJ at 47 (MacDougall was supposed to review the materials sent over "from across the street" and it was not his place to conduct an investigation).

[422] Memo from Mark J. MacDougall, Trial Attorney, to Gerald E. McDowell, Chief, Fraud Section, Ref. Resolution Trust Corporation Criminal Referral No. C0004, dated August 31, 1992, Naming James B. McDougal, Susan H. McDougal and Lisa Aunspaugh (Feb. 23, 1993) (Doc. Nos. 004567 through 72).

[423] Id.

[424] Id.

[425] Id.

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> Based solely upon available information, and in light of applicable law and current Fraud Section standards for prosecution, the conduct of James B. McDougal, Susan H. McDougal and Lisa A[u]nspaugh as described in the criminal referral does not appear to warrant the initiation of a criminal investigation.[426]

MacDougall testified that if the decision whether to open an investigation had been his, he would not have relied solely on his memorandum and would have required more information.[427] He said his memorandum was not meant to be the final word on whether C-0004 should be investigated or declined and that if someone declined solely from his memorandum, that person was "certainly avoiding . . . [her] obligations at the time."[428]

There was some testimony critical of MacDougall's failure to review the referral's exhibits and contact investigators. Donald Mackay, a Fraud Section attorney who later led the DOJ team investigating Madison Guaranty, opined that MacDougall's memorandum "missed the boat," and thought the referral had enough information and allegations to warrant opening an investigation.[429] Dwight Bostwick, another Fraud Section attorney who later assisted Mackay in his investigation of Madison Guaranty, testified that his practice was to look at a referral's

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[426] Id. MacDougall testified that what he meant by "Fraud Section standards" was what members of the Dallas Bank Fraud Task Force had learned through the many cases it tried, to more than 200 convictions, and some acquittals. MacDougall 5/30/95 GJ at 55. MacDougall said the Task Force tried to apply what it had gleaned from trying so many cases to its review of referrals. Id. McDowell thought that MacDougall was referring to "standards he was used to in the Dallas Bank Fraud Task Force." McDowell 5/30/95 GJ at 48.

[427] MacDougall 5/30/95 GJ at 72 ("If I was being asked to make the final decision, I would have asked for more information than I had in hand because of who the witnesses were").

[428] Id. at 70-72.

[429] Mackay 6/27/95 GJ at 19-24, 81-83.

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exhibits, because "the importance of a referral is the documents underlying [it]."[430]

4. DOJ's March 19, 1993 Memorandum.

After MacDougall, Carver drafted a transmittal memorandum for Keeney summarizing the Fraud Section's views on Banks's recusal request and the merits of the referral. The memorandum, which was dated March 19, 1993, read:

> The attached recusal package was forwarded for review from your office on February 18, 1993. We have reviewed the material in the package and have concluded that there is no identifiable basis for recusal by the U.S. Attorney. Further, we would not question a decision by the U.S. Attorney to decline further substantive action on the Referral. A copy of the Fraud Section's memorandum summarizing our review is attached for your use and, should you decide it is appropriate, for forwarding to the U.S. Attorney in Little Rock.[431]

The memorandum was typed on March 2,[432] and initialed by both Carver and McDowell on the same date.[433] He did not know of any changes after he prepared it, nor did he remember conversations with anyone outside of the Fraud Section about it.[434]

Carver said the position against recusal was McDowell's decision, backed by a strong recommendation from Carver.[435] In Carver's view, Banks gave no reason for his recusal, short of

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[430] Bostwick 7/6/95 GJ at 17.

[431] Memo from John C. Keeney, Acting Assistant Attorney General, to Douglas N. Frazier, Associate Deputy Attorney General, Subject: Recusal by the U.S. Attorney's Office for the Eastern District of Arkansas on a Resolution Trust Corporation Referral (Mar. 19, 1993) (Doc. No. 017491).

[432] Id.; Carver 2/1/95 Int. at 2; Carver 7/6/95 GJ at 56-57.

[433] Carver 7/6/95 GJ at 59.

[434] Carver 2/1/95 Int. at 2.

[435] Id.

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not wanting to handle the case.[436]

The March 19 memorandum said the Fraud Section "would not question a decision by [USAO-EDAR] to decline further substantive action on the [R]eferral."[437] Carver doubted that he had ever before drafted a memorandum in a recusal situation like the March 19 memo, where the Fraud Section's view of the merits of the underlying matter was included.[438] Carver agreed that the referral did not present a strong case.[439]

Carver believed the USAO-EDAR thought C-0004 was not meritorious.[440] Carver claimed the statement in the March 19 memorandum -- that the Fraud Section would not question a decision by USAO-EDAR to decline additional substantive action on C-0004 -- had no ulterior purpose and that "[t]here was no intent to steer the U.S. Attorney in any particular direction, beyond calling on the U.S. Attorney to handle and decide the matter."[441] Carver said "what we were saying was, we don't see any compelling reason to go forward and conduct an investigation

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[436] Id.

[437] Memo from John C. Keeney, Acting Assistant Attorney General, to Douglas N. Frazier, Associate Deputy Attorney General, Subject: Recusal by the U.S. Attorney's Office for the Eastern District of Arkansas on a Resolution Trust Corporation Referral (Mar. 19, 1993) (Doc. No. 017491).

[438] Carver 2/1/95 Int. at 3; Carver 7/6/95 GJ at 63.

[439] Carver 2/1/95 Int. at 50.

[440] Carver 7/6/95 GJ at 68 (USAO-EDAR was of the view that C-0004 "was not a very compelling case to pursue").

[441] Carver 7/17/95 at 2; see Letter to OIC, Kenneth W. Starr, from G. Allen Carver Jr., Fraud Section's Principal Deputy Chief, dtd, Ref: Grand Jury Appearance at 2-3 (July 17, 1995).

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of McDougal if you don't want to."[442] The language chosen for the March 19 memorandum "simply communicated that from our review of it, we don't really see any compelling reason to question the U.S. Attorney and the FBI."[443] Carver said his purpose was "to share with the U.S. Attorney and officials up the chain in the Department what the Fraud Section thought of the RTC Referral."[444]

Justice Department witnesses (including Carver) agreed they had never seen a memorandum denying a U.S. Attorney's recusal request and saying no question would be raised about a merits-related course of action by that official.[445]

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[442] Carver 7/6/95 GJ at 50-51.

[443] Id. at 65-66.

[444] Letter to Kenneth W. Starr, Esquire, Office of the Independent Counsel, from G. Allen Carver Jr., Fraud Section's Principal Deputy Chief, at 2 (July 17, 1995); see also Carver 2/1/95 Int. at 3 (the "not question a decision" language was put in the March 19 Memorandum so that Kenney and Frazier would know the Fraud Section and the Criminal Division would not be critical if the case was declined); Carver 7/6/95 GJ at 63-64 (the language was for Frazier and Keeney to get an idea, if necessary, what the Fraud Section thought of the case).

[445] Carver 2/1/95 Int. at 3 (Carver doubted he ever put a similar statement in a Memorandum addressing a recusal request, but each recusal request is "one of a kind"); Frazier 6/1/95 GJ at 94 (could not remember seeing similar language in memoranda dealing with recusal issues in other situations); Margolis 4/5/95 Int. at 3 (could not remember a situation where a recusal request was denied and then the Criminal Division was asked for an opinion on the merits); Keeney 4/7/95 Int. at 4 (could not remember ever seeing a combination of a recusal denial and an opinion on the merits of the related case); Urgenson 6/1/95 GJ at 34-35 ("not normal" for DOJ to communicate its opinion on a case assigned to a United States Attorney, but explaining that this was "not a normal case");

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5. The Transmission of the March 19 Memo.

Carver's memo, which was post dated to March 19, was sent to and received on March 2 by Larry Urgenson, Acting Deputy Assistant Attorney General for the Criminal Division.[446]

Urgenson recalled signing and approving the memo for Keeney.[447] Keeney knew about the March 19 memorandum and recusal package, and said Urgenson probably discussed it with him.[448] Keeney may have seen the March 19 memorandum after it was sent out of the Criminal Division.[449]

Urgenson could not explain the delay between March 2 (when the memo was delivered to his office) and March 19 (the date it left).[450] He did not remember having any meetings or discussions with anyone about the memo between March 2 and March 19.[451] He thought he may have reviewed the package and put it aside to examine more closely later.[452] Urgenson suggested

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[446] Urgenson 3/29/95 Int. at 1, 3; see Correspondence Tracking System Status/Actions, Record Update (June 2, 1994) (Doc. No. 014577) (Criminal Division correspondence tracking sheet indicating receipt by Urgenson on March 2, 1993); (Doc. No. 017491) (copy of Memo to Douglas N. Frazier, Associate Deputy Attorney General, from John C. Keeney, Acting Assistant Attorney General (Mar. 19, 1993) (showing Urgenson's last name typed on lower left hand corner of document); Carver 7/6/95 GJ at 45, 83.

[447] Urgenson 3/27/95 Int. at 3; see also Keeney 4/7/95 Int. at 3 (not unusual for Urgenson to sign on his behalf).

[448] Keeney 4/7/95 Int. at 3. Urgenson did not remember discussing the contents of the March 19 memorandum with Keeney. Urgenson 6/1/95 GJ at 43.

[449] Keeney 4/7/95 Int. at 3. On the MacDougall memorandum, Keeney had no specific recollection of having seen it, but he "assume[d]" he read it. Keeney 7/6/95 GJ at 14.

[450] Urgenson 3/27/95 Int. at 3; Urgenson 6/1/95 GJ at 26.

[451] Urgenson 3/27/95 Int. at 3.

[452] Id.

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the gap was due to the transition between administrations, which left only a few people to run the Criminal Division.[453]

Urgenson thought that he put the memo in the Deputy Attorney General's out box.[454] He did not remember discussing the matter with Frazier; nor could he say for sure whether Frazier received the March 19 memorandum[455] The evidence shows Frazier did not receive it until June 1993, three months after it had been signed out of the Criminal Division by Urgenson.[456]

The Criminal Division's correspondence tracking system showed the March 19 memo was sent to the Executive Secretariat on March 19. The Executive Secretariat tracking sheet indicated it did not receive the March 19 memo; it was not sent to Frazier in the Deputy Attorney General's office.[457] Remarks on the Executive Secretariat's tracking sheet showed that efforts were made to obtain a copy of the March 19, 1993 memo without success and the matter finally was closed out on August 17, 1994, with a notation that a copy of the March 19, 1993 memo was not available.[458]

Around June 23, 1993, Frazier finally learned that a decision on the Banks recusal letter

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[453] Id.

[454] Id. at 5.

[455] Id. at 3, 5.

[456] Frazier 6/1/95 GJ at 71-72.

[457] Plavchan 3/20/95 Int. at 3; Correspondence Tracking System Status/Actions, Record Update (June 2, 1994) (Doc. No. 014577); Department of Justice Executive Secretariat History Data Sheet, from Anthony Moscato, Director, EOUSA to Acting AG through Frazier Acting Deputy Attorney General (Feb. 17, 1993) (Doc. No. 017456); Chiarizia 3/22/95 Int. at 2.

[458] Plavchan 3/20/95 Int. at 3.

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was still outstanding when the EOUSA, acting in response to a C-0004 status inquiry from the RTC, contacted him to find out what decision had been made on the recusal request.[459]

D. The David Hale Matter Revived Little Rock's Interest in Madison Guaranty, and DOJ Sent the Referral Back to USAO-EDAR.

1. Brief Background.

The FBI Little Rock field office did not investigate Madison Guaranty until the end of April or early May 1993, when it received an auxiliary office lead in a wire fraud case from the FBI in Newark.[460] As a result, FBI-Little Rock opened a new fraud investigation targeting Little Rock Municipal Court Judge David Hale and Capital Management Services ("CMS"), Hale's Small Business Investment Company ("SBIC").[461] Around May 24 or 25, 1993, FBI-Little Rock received a referral from the SBA's Inspector General, indicating that audits of CMS raised questions about delinquent loans at the company.[462] One of the delinquent loans was CMS's $300,000 loan to Susan McDougal, d/b/a Master Marketing. The pursuit of the Hale/CMS matter, which included the July 21, 1993 execution of a search warrant directed at Hale and his businesses, turned up information establishing a connection between CMS and Madison

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[459] Memo from Deborah C. Westbrook, Legal Counsel to Douglas N. Frazier, Associate Deputy Attorney General, ref. Conversation of June 7 (June 8, 1993) (Doc. No. 006675); Frazier 6/1/95 GJ at 64-65, 70-74, 84-86; Henneman 1/31/95 Int. at 2-3.

[460] Irons 2/14/95 Int. at 6; Irons 5/21/96 GJ at 50-51.

[461] Irons 2/14/95 Int. at 6.

[462] Irons 5/21/95 GJ at 52-55.

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Guaranty.[463] On August 20, 1993, FBI-Little Rock opened a bank fraud investigation targeting Madison Guaranty.[464]

2. The RTC Asked USAO-EDAR about the Status of C-0004.

On May 4, 1993, RTC Criminal Investigator Jean Lewis wrote to Richard M. Pence, the Interim U.S. Attorney in Little Rock, requesting written advice about where the referral stood.[465] Pence spoke to an assistant in his office, Fletcher Jackson.[466] Jackson confirmed what Pence already knew: The matter had been sent to DOJ, and Banks had suspected there was a possible political motivation behind the referral.[467] He also found the "file" in the office safe, and read Banks's prior correspondence, including the January 27, 1993 recusal letter.[468]

By letter dated May 10, 1993, Pence responded to the RTC.[469] His letter discussed the allegations of inappropriate political motivation that had been levied against the USAO-EDAR

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[463] Irons 2/14/95 Int. at 6; Irons 5/21/96 GJ at 59-60.

[464] Irons 2/14/95 Int. at 6-7.

[465] Letter to The Honorable Richard M. Pence from L. Jean Lewis, Criminal Investigator, (May 4, 1994) (Doc. No. 007062); Pence 5/9/95 Int. at 2; Pence 6/29/95 GJ at 6-7.

[466] Jackson evidently had known about C-0004 since October 1992, when Banks called Jackson into Banks's office and had him review the referral. Jackson 5/9/95 Int. at 1. Banks said he did not intend to assign the matter to Jackson; he simply asked the latter a statute of limitations question and what Jackson thought about the referral. Id. at 1-2. Jackson thought the matter involved an in-house check-kiting scheme the RTC had not fully run down to determine if Madison Guaranty had suffered a loss. Id. Jackson understood he was not to talk about the referral with others. Id. at 2.

[467] Pence 5/9/95 Int. at 2.

[468] Pence 6/29/95 GJ at 6-7.

[469] Id. at 7, 9-10.

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because of the first McDougal matter, and that Banks had determined the USAO-EDAR had a "conflict of interest" on a "second" investigation from the referral.[470] Pence said the referral had been sent to the EOUSA at Main Justice, and that he had not received a response.[471] Consequently, Pence did not know the referral's status.[472] He told the RTC to contact the EOUSA directly.[473]

3. The RTC Contacted the EOUSA.

After receiving Pence's May 10, 1993 letter, the RTC Criminal Investigator Jean Lewis called EOUSA to find out what had happened with C-0004.[474] Lewis first called Henneman on May 19, 1993.[475] Henneman embarked on a weeks-long search for the Banks recusal request and referral, leading her to express frustration to Lewis about the difficulty she encountered finding the material.[476]

There is evidence that at some point before June 7, 1993, the recusal package was located

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[470] Letter from Richard M. Pence, Jr., United States Attorney to Ms. L. Jean Lewis, Criminal Investigator (May 10, 1993).

[471] Id.

[472] Id.

[473] Id.

[474] Lewis 3/14/94 Fiske Int. at 2-3; see also Henneman 5/25/95 GJ at 30-51.

[475] Henneman 5/25/95 GJ at 30.

[476] See E-mail from Jean Lewis, Criminal Investigator, to L. Richard Iorio (May 26, 1993); Henneman 5/25/95 GJ at 38-40.

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in the Fraud Section by Audrey Word, a Supervisory Paralegal Specialist in that Section,[477] possibly received by EOUSA around June 2, 1993.[478] Justice Legal Counsel Deborah Westbrook sent a short note to Frazier on June 8:

> Pursuant to our conversation of June 7, 1993, attached is a memorandum dated March 19, 1993, regarding the recusal of the U.S. Attorney's Office for the Eastern District of Arkansas on a Resolution Trust Corporation referral. Please advise this office of your decision regarding this matter.[479]

By this point Deputy Attorney General Philip Heymann had been appointed by the new administration.[480] One of his Associate Deputies was David Margolis.[481] Margolis worked on criminal matters, so Frazier referred Westbrook's June 8 note to him[482] Margolis asked for a briefing,[483] and Frazier and Margolis met.[484] Frazier had not yet read the February 23

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[477] Id. Word said she could not find any information about the referral in her computer system. Word 1/26/95 Int. at 1. Henneman testified the statement in Lewis's e-mail that Word located the referral in the Fraud Section, was correct. Henneman 5/25/95 GJ at 41-42. That e-mail also said Word claimed the individual assigned to the referral "'didn't want to deal with it,' so she sent the [R]eferral and all pertinent info back to Donna Henneman for further disposition." E-mail from Jean Lewis, Criminal Investigator, to L. Richard Iorio (June 8, 1993). Word said she "definitely" did not say that anyone "didn't want to deal" with the referral. Word 1/26/95 Int. at 2.

[478] Henneman 5/25/95 GJ at 43-44.

[479] Note to Douglas N. Frazier, Associate Deputy Attorney General to Deborah C. Westbrook, Legal Counsel (June 8, 1993) (Doc. No. 006675); Westbrook 6/22/95 GJ at 28; Henneman 5/25/95 GJ at 42-46; Frazier 6/1/95 GJ at 64-65.

[480] Heymann 5/30/95 Int at 1.

[481] Margolis 8/23/95 Int. at 1.

[482] Note to Douglas N. Frazier, Associate Deputy Attorney General to Deborah C. Westbrook, Legal Counsel (June 8, 1993) (Doc. No. 006675); Frazier 6/1/95 GJ at 65.

[483] Frazier 6/1/95 GJ at 65; see Note to Douglas N. Frazier, Associate Deputy Attorney General to Deborah C. Westbrook, Legal Counsel (June 8, 1993) (Doc. No. 006675).

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MacDougall memorandum, so he flipped to the memo's recommendation section without reading the entire memorandum.[485] Frazier noted the Criminal Division's opinion that "there really isn't a case,"[486] but cautioned the matter was not so simple because of the March 19, 1993 Keeney memorandum.[487] That memo said the Criminal Division would "acquiesce" or "wouldn't object" if the investigation was declined, which was "not as strong" a statement.[488]

Margolis agreed that recusal was not required and the matter probably should be declined.[489] He did not discuss recusal or the referral with anyone at USAO-EDAR.[490] Margolis said Main Justice's decision on recusal was "somehow" communicated to the District; he did not remember preparing a transmittal letter to Little Rock to notify that office of DOJ's decision.[491] It was possible that he told Frazier to prepare a transmittal letter, but Margolis was not sure.[492] Margolis told Frazier that the recusal package had been sitting around at Main Justice for some

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[484] Frazier 6/1/95 GJ at 67.

[485] Frazier did not read the MacDougall memorandum until his interview with the OIC. Frazier 6/1/95 GJ at 67.

[486] Id. at 66.

[487] Id. at 67.

[488] Id. at 68. Frazier thinks a memo may have been prepared for USAO-EDAR, saying there did not appear to be a need for recusal if they were going to decline, and they could rely on the analysis done in the Fraud Section. Id. at 69, 83. He did not know if he ever saw such a memo signed, and he had no additional discussions with Margolis on the matter. Id.

[489] Margolis 4/5/95 Int. at 2.

[490] Id. at 3.

[491] Id.

[492] Id.

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time.[493] Margolis thought the delay was caused by the change in administrations.[494]

Around June 17 to 21, 1993, Frazier left Main Justice to serve as Interim U.S. Attorney for the Middle District of Florida.[495] On June 23, 1993, the EOUSA still had not heard from Frazier,[496] so Henneman contacted him in Florida and asked what decision had been made on Banks's recusal request.[497] Frazier was surprised the EOUSA did not know the status because he knew "we had instituted some action" (a "memo or letter or something" had been prepared), though he did not know if it had left the Deputy's office.[498] Frazier told Henneman that Justice denied the recusal because the Criminal Division had determined there was nothing to investigate.[499] Henneman noted on a copy of Westbrook's June 8 note: "Per Doug[,] 6/23[,] sent back to district for decision. Crim[inal Divsion] suggested declination."[500] That same day, Henneman told the RTC the matter had been sent back to Little Rock and Justice found no basis for recusal.[501]

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[493] Id. at 2.

[494] Id. This was echoed by other DOJ witnesses. See, e.g., Keeney 4/7/95 Int. at 3-4.

[495] Frazier 3/24/95 Int. at 1; Frazier 6/1/95 GJ at 84.

[496] Frazier 3/24/95 GJ at 84-85.

[497] Henneman 5/25/95 GJ at 47-48; Frazier 6/1/95 GJ at 84-85.

[498] Frazier 6/1/95 GJ at 84-85.

[499] Id. at 84.

[500] Note from Douglas N. Fraizer, Associate Deputy Attorney General to Deborah C. Westbrook, Legal Counsel (June 8, 1993) (Doc. No. 006675); Henneman 5/25/95 GJ at 49; Frazier 6/1/95 GJ at 84-85.

[501] E-Mail from Jean Lewis, Criminal Investigator to L. Richard Iorio (June 23, 1993); Henneman 5/25/95 GJ at 47-48.

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E. Back to Little Rock: The Declination of C-0004; the New Referrals and Casey's Recusal.

1. Pence and C-0004.

Interim USA-EDAR Pence received a call from the EOUSA around July 1993 telling him Main Justice had considered the recusal request of the USAO-EDAR and the Criminal Division had determined the referral lacked merit.[502] The EOUSA followed up on the call with a confirmation letter,[503] enclosing a copy of the February 23 MacDougall memorandum.[504] Pence spoke with Fletcher Jackson, who was working with the FBI in the investigation of Hale and CMS.[505] Jackson told Pence there might be a connection between Hale and the referral.[506] Jackson recommended the transactions outlined in the referral be included in the Hale investigation.[507] Pence agreed and assigned Jackson.[508] A separate case was not opened on the

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[502] Pence 5/9/95 Int. at 2 (call was in July); Pence 5/12/95 GJ at 10. Pence testified the call "could have been late May, could have been June. I suppose even early July, I'm not sure." Pence 5/12/95 GJ at 10. Pence recalled not knowing what to do with it at first. Pence 5/12/95 GJ at 13. He believed he was told that it was up to the USAO-EDAR to make the final decision on C-0004, but at the same time he was told the Criminal Division did not think the referral set out a federal criminal offense. Pence 5/9/95 Int. at 2-3.

[503] Pence 5/9/95 Int. at 3; Pence 5/12/95 GJ at 10-11; see also, Memo from John C. Keeney, Acting Assistant Attorney General, to Douglas N. Frazier, Associate Deputy Attorney General, re: Recusal by the U.S. Attorney's Office for the Eastern District of Arkansas on a Resolution Trust Corporation Referral (Mar. 19, 1993) (Doc. No. 017491).

[504] Pence 5/9/95 Int. at 3; Pence 5/12/95 GJ at 12.

[505] Jackson 5/9/95 Int. at 5.

[506] Pence 5/9/95 Int. at 3; Pence 5/12/95 GJ at 13; Jackson 5/9/95 Int. at 2-3.

[507] Pence 5/12/95 GJ at 13-14; Jackson 5/9/95 Int. at 3.

[508] Pence 5/9/95 Int. at 3.

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referral, but Pence considered it open.[509]

2. Paula Casey Was Appointed USA-EDAR.

President Clinton appointed Paula Casey as the U.S. Attorney in Little Rock, starting August 16, 1993.[510] Arkansas Senator Dale Bumpers asked Casey if she wanted the job.[511] She told him she did.[512] Casey did not discuss her interest in the job with the Clintons before her appointment.[513] Casey felt that if one person responsible for her appointment, it was Senator Bumpers and not the Clintons.[514] To her knowledge, President Clinton's role was limited to approving the names submitted to him.[515]

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[509] Id. at 4; Pence 5/12/95 GJ at 15. Pence said he never reviewed C-0004. Pence 5/9/95 Int. at 4. He did not remember Jackson ever updating him on whether a connection existed between the Hale/CMS matter and the McDougal/Madison Guaranty transactions set out in C-0004. Pence 5/9/95 Int. at 4. Up until the arrival of Paula Casey, President Clinton's appointment to the post of U.S. Attorney in Little Rock, Pence did not know of any new developments relevant to the potential connection between the Hale and Madison Guaranty matters, and the possible involvement of the Clintons. Pence 5/9/95 Int. at 4-5.

[510] Casey 5/10/95 Int. at 1. Casey first met the Clintons in 1976 when she was a law school student at the University of Arkansas and the Clintons were professors at the school. Casey 5/10/95 Int. at 2. She helped with various jobs on Mr. Clinton's gubernatorial campaigns throughout the 1980s. Casey 5/10/95 Int. at 2. Casey pointed out that until the late 1980s, the Governor of Arkansas stood for re-election every two years. Casey 6/29/95 GJ at 8. She contributed to most of his gubernatorial campaigns, and she contributed to his presidential campaign. Id. She saw the Clintons on social occasions while they were in Little Rock, attending functions at the Governor's mansion as a member of the Pulaski County Democratic Committee. Id. Governor Clinton appointed her to a juvenile justice commission. Id. at 9.

[511] Casey 5/10/95 Int. at 1.

[512] Id.

[513] Id.

[514] Id. at 2.

[515] Casey 6/29/95 GJ at 10.

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3. Pence Told Casey about the Referral.

On the Thursday night before she began, Casey spoke with Pence to let him know she would be starting on Monday.[516] Pence told Casey about two or three matters pending in the office.[517] Pence recalled there was a case involving the Clintons as witnesses, and that Banks had recused and sent the matter to the Justice Department.[518] Pence said Main Justice had sent the matter back, but not before reviewing it and finding no basis for a criminal violation.[519]

4. Casey Reviewed C-0004.

Casey spent her first two or three weeks attending to various administrative matters, including the selection of her First Assistant.[520] She met with each of the assistants and spoke with Jackson last.[521] The two spoke about a number of matters assigned to Jackson, including the Hale matter.[522] Jackson mentioned a prior referral from the RTC on Madison Guaranty, which had been forwarded to Washington, D.C.[523] Jackson described the RTC referral as a "real hot potato" that had been closed.[524] Jackson told her the Hale investigation could "reopen that can of

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[516] Id. at 12-13. Pence recalled there may have been more than one phone conversation before his first meeting with Casey. Pence 6/29/95 GJ at 18.

[517] Casey 6/29/95 GJ at 12-14; Pence 6/29/95 GJ at 18-19.

[518] Pence 6/29/95 GJ at 18-19.

[519] Id. at 19.

[520] Casey 6/29/95 GJ at 11-14; Casey 5/10/95 Int. at 3.

[521] Casey 6/29/95 GJ at 14.

[522] Id. at 14-15; Casey 5/10/95 Int. at 3.

[523] Casey 6/29/95 GJ at 15; Casey 5/10/95 Int. at 3.

[524] Casey 6/29/95 GJ at 15; Casey 5/10/95 Int. at 3.

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worms."[525]

Casey also learned from Jackson that the RTC was working on additional referrals on Madison Guaranty.[526] Jackson said he expected them by the end of August.[527]

Casey did not remember learning then that the 1992 Referral mentioned Tucker; her feeling then was that she would have to recuse from any investigation by her office involving Governor Tucker.[528] She did not feel the same of the Clintons.[529] She did remember Jackson telling her that the new referrals would deal with Tucker.[530]

Jackson said he did not brief Casey on the Hale/Madison Guaranty investigations.[531] During a meeting, Assistant U.S. Attorney (AUSA) Michael Johnson (whom Casey designated First Assistant)[532] asked all AUSAs for a list of significant cases.[533] Jackson said he listed Hale, Tucker, and the Clintons, gave it to Johnson, and left.[534]

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[525] Casey 6/29/95 GJ at 15; Casey 5/10/95 Int. at 3.

[526] Casey 5/10/95 Int. at 3. On October 8, 1993, the RTC transmitted nine additional Madison Guaranty-related referrals to the attention of Casey in Little Rock; see also Letter from Lee O. Ausen, RTC Supervisory Investigator to Honorable Paula Jean Casey, United States Attorney, Eastern District of Arkansas (Oct. 8, 1993) (Doc. No. 017692).

[527] Casey 6/29/95 GJ at 20.

[528] Casey 5/10/95 Int. at 4.

[529] Id.

[530] Casey 6/29/95 GJ at 20.

[531] Jackson 5/9/95 GJ at 6.

[532] Johnson 6/29/95 GJ at 4-5.

[533] Jackson 5/9/95 Int. at 6; Johnson 6/29/95 GJ at 18-19.

[534] Jackson 5/9/95 Int. at 6-7. The evidence indicates that Jackson did write such a memorandum. See Memo from Fletcher to Michael, "My significant cases are as follows" (Sept.

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Casey did not remember any particular discussion with Pence about C-0004 after joining the USAO-EDAR, but she felt that she must have at least discussed it with him in passing, because he had the referral sent to her.[535] She read the referral, as well as the February 23 and March 19, 1993 MacDougall and Keeney memoranda.[536] The Clintons, Tucker and Stephen A. Smith were listed as witnesses.[537] In addition to knowing the Clintons and Governor Tucker, she also knew Smith.[538]

Casey felt there was little merit to the referral.[539] She relied heavily on the MacDougall memorandum; she did not review any of the referral's exhibits.[540] Casey said she did not analyze the documents she had read because the matter was "finished" and there was nothing she needed

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16, 1993). It listed three matters, the first of which was "David Hale and Madison Guaranty, et al." It did not specifically list Tucker or the Clintons.

[535] Casey 6/29/95 GJ at 15-16.

[536] Casey 5/10/95 Int. at 4; Casey 6/29/95 GJ at 16. Although she was not entirely sure, Casey thought that she also saw Moscato's February 9, 1993 memorandum to Gerson about the recusal of USAO-EDAR. Casey 6/29/95 GJ at 19. She also saw Banks's October 16, 1992 and January 27, 1993 letters, although she was not sure that she saw them with her first review of the referral. Id. at 18-19. See Memo from Mark J. MacDougall, Trial Attorney to Gerald E. MacDowell, Chief, Fraud Section (Feb. 23, 1993) (Doc. Nos. GEM 000098-102); Memo from John C. Keeney, Acting Assistant Attorney General to Douglas N. Frazier, Associate Deputy Attorney General (Mar. 19, 1993) (Doc. No. GEM 000062).

[537] RTC Crim. Ref. No. C-0004 at 18 (Aug. 31, 1992). Casey was "sure" she read the list of witnesses. Casey 6/29/95 GJ at 76.

[538] Casey 6/29/95 GJ at 40-41.

[539] Casey 5/10/95 Int. at 4.

[540] Casey 6/29/95 GJ at 18; Casey 5/10/95 Int. at 4-5. Casey thought the exhibits were no longer in the USAO, but had been turned over to the FBI in Little Rock. Casey 6/29/95 GJ at 18; Casey 5/10/95 Int. at 5.

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to do.[541]

5. Casey Met with Hale's Attorney.

Casey became personally involved in the Hale investigation in late August 1993 when she received a telephone call from Hale's attorney, Randy Coleman.[542] Coleman asked for a meeting, which occurred at Casey's office on September 7, 1993.[543]

Coleman said Hale had information about people the USAO-EDAR would want to prosecute.[544] In return, Hale wanted immunity or a misdemeanor plea.[545] Casey said she was not willing to confer immunity on Hale regarding the ongoing SBA fraud investigation; she was willing to talk about a reduction of sentence; but because Hale was a public official, she would insist that he plead to at least one felony count.[546] She said she offered to allow Hale to make a proffer, something that she recalled doing a number of times.[547] She testified that Hale never took her up on that offer.[548]

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[541] Casey 6/29/95 GJ at 17; Casey 5/10/95 Int. at 4.

[542] Casey 5/10/95 Int. at 5.

[543] Id.; Casey 6/29/95 GJ at 21. Jackson did not attend, but may have furnished Casey with information before her meeting with Coleman. Casey 5/10/95 Int. at 6. Johnson also did not attend. Johnson 6/29/95 GJ at 21. Pence also was not involved. Pence 5/9/95 Int. at 6.

[544] Casey 5/10/95 Int. at 6.

[545] Id.

[546] Id.

[547] Casey 6/29/95 GJ at 24.

[548] Id.; Johnson 6/29/95 GJ at 34-35, 45-46.

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Casey testified that Coleman said Hale would be willing to wear a wire.[549] He may have made that offer during the September 7 meeting or at a later time.[550] Casey said she was unable to evaluate that offer because she never received a proffer to determine whether Hale had any value as a potential "undercover" operative.[551] The meeting lasted only five or ten minutes, with no resolution.[552] No promises were made at this meeting, and Coleman never mentioned who Hale supposedly had useful information about.[553] Casey nevertheless suspected Coleman was referring to President Clinton and Governor Tucker.[554]

6. The Recusal Issue Surfaced in Correspondence with Coleman.

On September 15, 1993, Coleman wrote Casey complaining about the status of the plea negotiations[555] and suggested that she recuse herself from the Hale matter.[556] Casey discussed the Coleman letter with Johnson, who was concerned.[557] He felt there was no basis for Casey to recuse.[558] Casey recalled that at some later point, either in a phone call or letter to Coleman, she

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[549] Casey 6/29/95 GJ at 25.

[550] Id.

[551] Id.

[552] Casey 5/10/95 Int. at 6.

[553] Id.

[554] Id.

[555] Johnson 6/29/95 GJ at 34.

[556] Casey 5/10/95 Int. at 6; Johnson 6/29/95 GJ at 34.

[557] Casey 5/10/95 Int. at 7.

[558] Id.

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told him that Hale would have to make a proffer.[559] Casey said Coleman never complied, and never provided any specifics or names to her office.[560] She said Coleman only made vague allegations that "these people were just too big for [USAO-EDAR] to prosecute."[561]

Casey and Johnson discussed a response to Coleman's letter, which was sent out September 16.[562] The letter said Hale was making vague allegations about important people and was trying to talk the USAO-EDAR out of presenting his case for indictment in September.[563] The USAO was more than willing to listen to anything Hale had to say.[564] Johnson testified there was a series of letters going back and forth between Coleman and the USAO between September 15 and 20, 1993.[565] In one of the letters, Coleman suggested that Casey recuse herself from the Hale matter.[566]

Johnson believed Coleman was not dealing with the USAO in good faith and was attempting to manipulate the process.[567] He never produced Hale for a proffer.[568] Johnson's sense of Hale's bona fides was compounded by his (Johnson's) being contacted at about this time by

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[559] Id.

[560] Id.

[561] Id.

[562] Johnson 6/29/95 GJ at 34.

[563] Id.

[564] Id.

[565] Id.

[566] Id. at 35.

[567] Id. at 34-35.

[568] Id. at 34.

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FBI-Little Rock; the Division's SAC told Johnson the Bureau had been contacted by reporter Jeff Gerth of the New York Times.[569] Gerth said he had spoken with Hale and Coleman, who had given Gerth the detailed information that they told Gerth USAO-EDAR refused to hear.[570] Johnson believed that Hale's willingness to contact the press with information that he was unwilling to give to the USAO was evidence of bad faith.[571]

7. Main Justice Learned of Hale's Allegations.

Irvin Nathan, the Principal Associate Deputy Attorney General under Deputy Attorney General Phil Heymann, said that in the middle of September 1993, Gerth called.[572] Gerth said there was a municipal judge in Arkansas named David Hale with a complaint against USAO-EDAR.[573] Gerth told him the judge's attorney had been negotiating with the local USAO about a Small Business Administration matter and was raising questions about the competence and connections of the U.S. Attorney.[574] Gerth said the attorney did not believe the USAO should be handling the case.[575]

Gerth additionally said Hale had information about Madison Guaranty, including the

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[569] Id. at 35.

[570] Id.

[571] Id.

[572] Nathan 4/4/95 Int. at 1-2.

[573] Id. at 2.

[574] Id.

[575] Id.

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involvement of the Clintons and Arkansas Governor Tucker.[576] Gerth said Hale wanted charges dropped in exchange for his cooperation.[577]

Nathan believed Gerth when he said he had spoken with Hale and/or his attorney and the FBI.[578] Nathan told Gerth that he knew nothing about the matter, but that he would check.[579]

Nathan briefed Heymann about what he learned from Gerth.[580] Heymann asked Nathan to get background information, which Nathan did by contacting the Fraud Section.[581] He learned that an RTC criminal referral had been sent to the USAO-EDAR in the fall of 1992, and the USAO sent the matter to DOJ before the election.[582] Nathan said he learned that DOJ communicated back to the District in March or April 1993.[583]

Nathan saw copies of Casey's correspondence with Coleman.[584] He thought Casey's position on plea negotiations was reasonable; he thought Coleman was not giving the District anything of substance, not that Casey was refusing to accept information.[585]

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[576] Id.

[577] Id.

[578] Id.

[579] Id.

[580] Id. at 2-3.

[581] Id. at 3.

[582] Id.

[583] Id.

[584] Id. at 5.

[585] Id.

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Nathan spoke with Gerth a couple of times, but not with Coleman.[586] Gerth raised Casey's recusal with Nathan, and Nathan responded he did not understand why Coleman had gone to the press and that Coleman should approach the Criminal Division at Main Justice if he thought Casey was a problem.[587] Nathan nevertheless suggested to Keeney that he contact Casey to see if recusal was appropriate.[588]

8. Keeney Urged Casey to Recuse.

On September 20, 1993, Keeney called Casey and urged her to consider recusing herself from the Hale investigation.[589] Casey said this telephone conversation was the first time she heard Hale's allegations about President Clinton; Keeney passed on to her what he had learned from Nathan.[590] Keeney specifically said that Hale claimed he was involved in a meeting with President Clinton about fraudulent activities.[591] Keeney expressed the opinion that such an allegation alone was enough to warrant Casey's recusal.[592] Casey resisted recusal, telling Keeney there was no basis for it.[593] She was upset because she thought he was basing his request on an

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[586] Id.

[587] Id.

[588] Nathan 6/13/95 GJ at 14.

[589] Keeney 7/6/95 GJ at 18; Casey 5/10/95 Int. at 7; Gangloff 3/29/95 Int. at 4-5.

[590] Casey 5/10/95 Int. at 7.

[591] Id.

[592] Id. at 7-8.

[593] Id. at 7.

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anonymous phone call.[594] She told Keeney that she was waiting for additional facts from Coleman before making any decision and that Coleman was refusing to proffer.[595]

Keeney agreed Casey seemed offended at the recusal suggestion.[596] Keeney pointed out she was a Clinton appointee and Hale supposedly had information implicating President Clinton.[597] Keeney did not think it appropriate that a President's appointee -- serving in his "hometown" -- should decide a matter involving that President.[598]

Casey would not recuse at that point.[599] She told Keeney there were insufficient facts to warrant that step.[600] Casey felt that if additional facts were turned up about Governor Tucker or Smith, then she would have to recuse.[601] She did not believe Keeney mentioned Governor Tucker's name, but thought she brought it up.[602] She said it did cross her mind that the Hale investigation might be connected with Madison Guaranty and the allegations in RTC Referral C-0004.[603]

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[594] Id.

[595] Id.

[596] Keeney 7/6/95 GJ at 18-19.

[597] Id.

[598] Id. at 19.

[599] Casey 5/10/95 Int. at 8.

[600] Id.

[601] Id.

[602] Id.

[603] Id.

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Johnson advised Casey on the Hale recusal issue, and she relied on his advice.[604] Johnson felt recusal would be a mistake and bad policy.[605] His fear was that by capitulating to a recusal request regarding Hale, a precedent would be set so that if someone told the press that he had information that implicated the President, then the office would be held hostage all of President Clinton's term.[606] Johnson believed the office should hold firm and insist that Hale make a proffer so the information could be evaluated and the need for recusal more intelligently addressed.[607]

Casey told this Office that she knew she would recuse once she had information that would justify that step.[608] If Hale had proffered information on President Clinton's and Governor Tucker's roles, then she would have recused.[609] She refused to do so until those allegations were furnished.[610]

On September 23, 1993, Hale was indicted.[611] On the day of the indictment, an article about Hale's allegations in the Arkansas Democrat-Gazette summarized Hale's allegations about President Clinton and Governor Tucker and mentioned the failed negotiations with the USAO-

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[604] Id.

[605] Johnson 6/29/95 GJ at 38.

[606] Id.

[607] Id.

[608] Casey 5/10/95 Int. at 9.

[609] Id.

[610] Id.; Casey 6/29/95 GJ at 33.

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EDAR.[612]

9. Casey's September 24 Meeting with FBI Little Rock Field Office.

On September 24, 1993, Casey, Johnson, and Jackson of the USAO-EDAR met with Whitehead, Irons, and Reign and Hall of the FBI-Little Rock.[613] Irons said the meeting was called to discuss problems the FBI was having with Jackson.[614]

Irons provided Casey with a review of the FBI's ongoing investigation of Madison Guaranty.[615] Irons said the stated purpose of his review was to assist Casey in thinking about

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[611] Indictment, United States v. Hale et at., No. LR-CR-93-147 (E.D. Ark. Sept. 23, 1993); Casey 6/29/95 GJ at 42; Casey 5/10/95 Int. at 9.

[612] Jonathan Groves, Judge Expects to be Indicted in SBA Loans, Arkansas Democrat-Gazette, Sept. 23, 1993, at 1A (Doc. No. 001151).

[613] Casey recalled the metting as taking place in late September. Casey 6/29/95 GJ at 34; Casey 5/10/95 Int. at 9; Jackson 5/9/95 Int. at 9; Irons 5/21/96 GJ at 87-90; see also Facsimile sent from Paula J. Casey, United States Attorney, Easten District of Arkansas, to Carl Stern, Department of Justice Public Affairs Office (Mar. 30, 1994) (Doc. No. 018717).

[614] Irons 2/14/95 Int. at 10; Irons GJ 5/21/96 GJ at 87-88. The FBI served a federal grand jury subpoena on the RTC in Kansas City for all the relevant records on Madison Guaranty and McDougal. Id. Irons thought that all Madison Guaranty records would be needed to conduct a thorough investigation. Irons later learned that Jackson had spoken with the RTC and, without previous consultation with the FBI, agreed to significantly limit the scope of the subpoenas. Id. Jackson did not believe it necessary to obtain the breadth of material Irons wanted. Jackson 5/9/95 Int. at 8. The FBI was having problems getting all Madison Guaranty documents and records from the RTC. Irons 2/14/95 Int. at 10; Jackson 5/9/95 Int. at 8. Jackson said the RTC could not find certain records and there were copying problems. Jackson told the RTC that if the records could not be obtained then, the agency could comply by the next grand jury. Jackson 5/19/95 Int. at 8-9. Jackson did not believe the RTC was being intentionally difficult about record production. Id. at 9.

[615] Irons 2/14/95 Int. at 10.

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recusal.[616] Irons expressed his opinion that Tucker and Smith were involved in criminal conduct and that if the investigation proceeded as expected, they would be charged with felonies.[617] Irons said Casey told the group that she would have to recuse and her only remaining issue was the timing.[618]

In addition to a discussion of the FBI's relationship with Jackson, there was a discussion of new RTC Madison Guaranty referrals that had not been received.[619] Casey said she raised the issue of recusal because she had not done so before, saying that if there was an investigation or if there were referrals involving Governor Tucker or Smith, then she could not participate.[620] Casey agreed Irons may have mentioned the names of Tucker and Smith, causing her to raise the recusal issue.[621]

Casey said that she did not recuse on September 24. She said the FBI was not then

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[616] Id.

[617] Irons 5/21/96 GJ at 89.

[618] Irons 2/14/95 Int. at 10.

[619] Casey 6/29/95 GJ at 35; Irons 5/21/96 GJ at 89.

[620] Casey 6/29/95 GJ at 35.

[621] Id. at 36. On March 29, 1994, Casey wrote a memorandum to Carl Stern in DOJ's Public Affairs Office in which she said "I told the FBI (Don Whitehead, Steve Irons, Dave Reign, and Gretchen Hall), AUSA Fletcher Jackson, and FAUSA Michael Johnson that I could not participate in investigation or prosecution matters pertaining to the Clintons or Jim Guy Tucker. It was also necessary for me to recuse because of my acquaintance with Steve Smith. That conversation took place sometime before October 1. Judging from my calendar I believe it took place on the morning of September 24, 1993." Memo from Paula Casey, United States Attorney, Eastern District of Arkansas to Carl Stern, Department of Justice, Public Affairs Office (Mar. 29, 1994) (Doc. No. 018718).

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investigating Tucker or Smith; it was only "trying" to do so.[622] She did not think her position changed from the position she took with Keeney on September 20.[623] According to Agent Irons, she said at that meeting, "I can't be any part of this and I am recused," and "I'm not going to announce this publicly that I've recused. But within the office, I'm putting everybody on notice that I don't want to hear anything about this."[624]

Johnson said he recalled that at the meeting the FBI probably mentioned specific names of people potentially involved in the Madison Guaranty matter.[625] Johnson emphasized they were "dealing with the beginning of an investigation" as opposed to a "complete evaluation."[626] He believed the recusal discussion on September 24 was "in the abstract" because at that point, they had nothing on which to base a judgment.[627] Johnson said "it was adamantly clear from the beginning" that Casey would recuse if the investigation moved beyond the "allegation stage."[628] Johnson said at that point, they had no records or anything to base their judgment on, so recusal was premature and unwise.[629] He advised Casey along those lines, and she followed his advice --

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[622] Casey 6/29/95 GJ at 38-39.

[623] Id. at 41.

[624] Irons 5/21/96 GJ at 89-90.

[625] Johnson 6/29/95 GJ at 51.

[626] Id.

[627] Id. at 52.

[628] Id.

[629] Id.

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according to Johnson "maybe against her better instincts."[630]

10. The New Referrals Reach Little Rock.

On October 8, 1993, the RTC in Kansas City sent nine more criminal referrals involving Madison Guaranty to Paula Casey in Little Rock.[631] Documentary evidence shows the referrals were sent via certified mail and received at FBI-Little Rock on October 12, 1993[632] and at the USAO-EDAR on October 14, 1993.[633]

Casey did not send an urgent report to DOJ about the new referrals; she did not then know the urgent report procedure existed.[634] Cases were opened on the new referrals.[635] The RTC notified the EOUSA about the new referrals by sending to Henneman copies of its transmittal letters to Little Rock, as well as summaries of the matters.[636]

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[630] Id. at 55-56.

[631] Letter from Lee O. Ausen, RTC Supervisory Investigator to Honorable Paula Jean Casey, United States Attorney, (Oct. 8, 1993) (Doc. No. 017692). The RTC also sent copies of the nine new referrals to the FBI in Little Rock. See Letter from L. Jean Lewis, Senior Criminal Investigator, to Donna Henneman, Ethics Program Manager (Oct. 13, 1993) (Doc. No. 066718).

[632] Nine Certified Mail Receipts addressed to Steve Irons, Supervisory FBI Agent and signed by B. Kell (Oct. 12, 1993) (Doc. Nos. P396620776, P396620777, P396620778, P396620779, P396620780, P396620781, P396620782, P396620783, P396620784).

[633] Nine Certified Mail Receipts addressed to Paula Casey, United States Attorney Arkansas and signed by Amanda Perkins (delivery date Oct. 14, 1993) (Doc. Nos. P396620767, P396620768, P137330501, P137330495, P137330496, P137330497, P396620773, P396620774, P137330500).

[634] Casey 6/29/95 GJ at 43.

[635] Johnson 6/29/95 GJ at 70.

[636] Letter from L. Jean Lewis, Senior Criminal Investigator to Donna Henneman, Ethics Program Manager (Oct. 13, 1993) (Doc. No. 006718).

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11. Casey Declined C-0004.

In late September 1993, Casey received a call from the EOUSA about referral C-0004.[637] Casey was told that RTC Investigator Jean Lewis was calling the EOUSA to find out the disposition of C-0004; the agency had not yet been told what had happened to it.[638] According to Westbrook, she told Casey she needed to make a "prosecutive determination" on C-0004.[639]

Casey testified that her best recollection was EOUSA asked her to write the RTC and tell them the referral had been declined.[640] Casey is not sure the EOUSA used the term "declined."[641] She thought EOUSA probably asked her to write Lewis so Lewis would stop calling.[642]

Johnson said Casey told him about her call from EOUSA.[643] He understood that she was asked to write a letter to the RTC explaining the status of C-0004; he did not know if the word "declined" was used.[644] Johnson said that "everybody's" understanding -- and by that he meant Casey's, his, and the EOUSA's understanding -- was the matter had been declined by DOJ,

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[637] Casey 6/29/95 GJ at 44-45. Casey was not sure about the date, but believed the call came in before her office moved from the courthouse; she placed it in the "last week of September." Id. at 44-45.

[638] Id. at 45.

[639] Westbrook 6/22/95 GJ at 34.

[640] Casey 6/29/95 GJ at 46.

[641] Id.

[642] Id. at 47.

[643] Johnson 6/29/95 GJ at 60-62.

[644] Id. at 61.

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because the Criminal Division had determined the referral had no prosecutive merit.[645] He thought that because no one had told the RTC that was what Casey was being asked to do.[646] Any notion the EOUSA told Casey that she was to make a decision on the referral and notify the RTC accordingly was "definitely inconsistent" with Johnson's recollection.[647]

Casey said that when Westbrook from EOUSA called, she was too busy to attend to the matter because she was in the middle of her office move.[648] After the move, EOUSA called again, and Casey apologized for not having addressed the matter sooner.[649] Casey reviewed C-0004 again, probably looked at the MacDougall memorandum once more,[650] and then drafted a letter to the RTC.[651] Casey's October 27, 1993 letter to the RTC read:

> I am writing at the request of the Office of Legal Counsel, Executive Office for U.S. Attorneys of the U.S. Department of Justice to let you know the status of [C-0004].
>
> As you know, this referral was reviewed by the Criminal Division of the U.S. Department of Justice at the request of the previous U.S. Attorney for the

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[645] Id.

[646] Id. at 61-62.

[647] Id. at 62.

[648] Casey 6/29/95 GJ at 47.

[649] Id.

[650] Id.

[651] Letter from Paula J. Casey, United States Attorney, Eastern District of Arkansas to L. Jean Lewis, Criminal Investigator (Oct. 21, 1993) (Doc. No. 007038); Casey 6/29/95 GJ at 47. Casey started the letter on October 21, but did not finish it until October 27. A comparison of the two letters shows no substantive differences. The changes to the final letter were merely formatting and punctuation. Letter from Paula J. Casey, United States Attorney, Eastern District of Arkansas to L. Jean Lewis, Criminal Investigator (Oct. 27, 1993).

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> Eastern District of Arkansas. The matter was concluded before I began working in this office, and I was unaware that you had not been told until I was contacted by the Office of Legal Counsel. After receiving the call from Legal Counsel I reviewed the referral, and I concur with the opinion of the Department attorneys that there is insufficient information in the referral to sustain many of the allegations made by the investigators or to warrant the initiation of a criminal investigation.
>
> Although I am declining to take further substantive action on this referral, my decision does not foreclose future prosecutions about the matters covered by the referral or related matters in the event that my office and the FBI are given access to records or information indicating that prosecutable cases can be made.[652]

Casey testified that she looked at the referral before drafting the letter.[653] When asked why she did not recuse from C-0004 because it mentioned Tucker and Smith[654] -- the people she identified in September 24 meeting as requiring recusal -- her response was that she would have if the matter had not been reviewed by the Justice Department.[655] As she saw it, the referral dated back to September 1992; it had "made the rounds" of the Criminal Division and Fraud Section at Justice, and had been analyzed by someone knowledgeable about such matters.[656] Casey said she also could have sent it back to Justice where "it could have circled the rounds for another year."[657] Alternatively she could have sent it back to the RTC and told the agency the referral had been reviewed and found insufficient to proceed, with the proviso that if the RTC found anything else

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[652] Letter from Paula J. Casey, United States Attorney, Eastern District of Arkansas to L. Jean Lewis, Criminal Investigator (Oct. 27, 1993).

[653] Casey 6/29/95 GJ at 47.

[654] RTC Crim. Ref. No. C-0004 at 18 (Aug. 31, 1992) (Doc. No. 006660).

[655] Casey 6/29/95 GJ at 49.

[656] Id.

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that might be relevant to C-0004, then USAO-EDAR would look at it again.[658] She chose the latter course, regarding it as more a matter of taking care of final details than making a substantive decision whether to decline or accept the case.[659] She pointed out that her letter said the "door was still open" to the RTC if it wished to submit anything more on C-0004.[660] Casey did not remember consulting with anyone else -- Jackson, Johnson or the FBI in Little Rock -- about her letter.[661]

Johnson said Casey showed him her draft letter to the RTC.[662] He read the referral (but not its exhibits), and he noticed that the Clintons, Tucker and Smith were all mentioned.[663] When asked why Casey rendered a decision on C-0004, in light of her remarks about recusal to the FBI on September 24, Johnson said Casey had not made the decision being communicated in the letter.[664] She merely "communicated to the RTC our understanding that a decision had been previously made about it."[665] He did not review any documents indicating that Main Justice had actually declined or rendered an opinion on the referral; he had gotten his sense

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657 Id.

658 Id. at 49-50.

659 Id. at 50.

660 Id. at 52.

661 Id. at 50.

662 Johnson 6/29/95 GJ at 58.

663 Id. at 62-64.

664 Id. at 62-65.

665 Id. at 64-65.

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"[s]omewhere."[666] Johnson said the only person concerned about C-0004 was Lewis.[667] The FBI was not; Jackson was not.[668] Johnson was not impressed with the referral; he felt that it was filled with "reckless speculation," and he was more concerned with moving forward on the "much more focused" independent investigation the FBI was conducting of Madison Guaranty.[669] He saw the October 27 letter to the RTC as "housekeeping."[670] The nine new referrals had come in before the October 27 letter was drafted and sent out,[671] and Johnson saw a lot of overlap between their allegations, and the matter that had been in the first referral.[672] Johnson said telling the RTC that USAO-EDAR was not going to act on C-0004 was of "no consequence," in light of the new referrals.[673]

By letter dated November 1, 1993, Lewis responded to Casey's October 27 letter; the RTC interpreted it as a "formal declination" of C-0004.[674] The letter asked Casey to send the

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[666] Id. at 66.

[667] Id.

[668] Id.

[669] Id. at 66-67.

[670] Id. at 67.

[671] Id. at 70.

[672] Id.

[673] Id. Johnson testified that with all the other things going on, the referral and the letter to the RTC were "the least significant things that I can think of that touched upon this matter." Id. at 73.

[674] Letter from L. Jean Lewis, RTC Senior Criminal Investigator to The Honorable Paula J. Casey, United States Attorney, Eastern District of Arkansas (Nov. 1, 1993).

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RTC any "documents . . . relative to the conclusion of this matter."[675] Casey did not respond to Lewis's letter. Casey testified that by that point, it was "abundantly clear" that Lewis was leaking information to the press.[676] Casey was trying to deal with C-0004 as a "substantive" matter, and she felt that Lewis was trying to deal with it as a "political" matter.[677] Casey felt the best way to deal with Lewis was to stop sending her any information.[678]

12. Casey Recused Herself from the New Referrals.

Casey claimed that when the new referrals came in she began to think about what arrangements ought to be made for her recusal.[679] One possibility was that she would recuse, but not her office.[680] That would mean that Johnson, as First Assistant, would become the U.S. Attorney on the referrals.[681] Another possibility was the matters could be sent to Justice.[682] Casey was concerned about the former possibility because it would mean turning over what could become the office's biggest investigation to someone else; it could have led to difficulties if, for example, Johnson said he needed a great deal of staff.[683] Casey would not have been in a position

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[675] Id.

[676] Casey 6/29/95 GJ at 78.

[677] Id.

[678] Id.

[679] Id. at 54.

[680] Id.

[681] Id.

[682] Id. at 54.

[683] Id. at 55.

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to question him.[684]

The matter ultimately was resolved by the intercession of Main Justice on November 3, 1993. Casey recalled that she had to attend an orientation session for new U.S. Attorneys in Annapolis, Maryland during the first week in November.[685] She had planned to discuss recusal with someone at the meeting.[686] Once in Annapolis, Casey received a message from Deputy Attorney General Heymann, who was calling from Washington, D.C.[687] He wanted her to come to his office on Wednesday for a meeting,[688] which she did.[689]

Heymann testified that as the media started to raise more allegations about the Hale/Clinton connection, he became more and more uncomfortable with the relevant matters being handled by anyone who had a relationship with President Clinton.[690] He arranged for her to come to a meeting at his office in Washington on November 3, 1993.[691] During the meeting, Heymann said he wanted to move the Hale and Madison Guaranty matters out of her office

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[684] Johnson 6/29/95 GJ at 55.

[685] Casey 6/29/95 GJ at 55-56.

[686] Id.

[687] Id. at 56.

[688] Id.

[689] Id. Although precise recollections vary about who participated in the meeting, the evidence shows that in addition to Casey and Heymann, it was attended by Nathan, Jo Ann Harris (then the Assistant Attorney General, Criminal Division), and Gangloff, Keeney, McDowell, Moscato, Urgenson. Casey 5/10/95 Int. at 13; Heymann 4/6/95 Int. at 5; Nathan 4/4/95 Int. at 6; Harris 5/5/95 Int. at 3; Gangloff 3/29/95 Int. at 6; Keeney 4/7/95 Int. at 5-6; Moscato 1/18/95 Int. at 7-8; Urgenson 3/27/95 Int. at 6.

[690] Heymann 6/13/95 GJ at 21-22.

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because her relationships with President Clinton and Governor Tucker were too close.[692] He wanted it moved to the Criminal Division in Washington.[693] Casey said she wanted to keep the Hale case, because it was so far along.[694] The prosecutors in the room said that would not work -- the whole "bundle," including the Hale case, had to be transferred.[695] Heymann did not remember Casey talking about a group of nine new referrals just received in her office, but he did have a vague memory they were talking about "a lot of different cases," particularly since Casey wanted to keep the Hale matter and get rid of the others.[696] He also did not remember if he knew at the November 3 meeting that Casey already had declined C-0004.[697] He remembered that coming up, but he could not remember whether it was before or after his meeting with Casey.[698]

Nathan recalled that Casey was not happy to be at the meeting and believed the recusal discussion was a personal attack on her.[699] Casey said her office had done a lot of work on the Hale case, and she and her office were acting responsibly.[700] He recalled there was a discussion of specific allegations about Tucker and Casey's possible business and social connections with

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[691] Heymann 4/6/95 Int. at 5.

[692] Heymann 6/13/95 GJ at 22.

[693] Id.

[694] Id. at 26.

[695] Id. at 26-27.

[696] Id. at 27.

[697] Id.

[698] Id. at 28.

[699] Nathan 4/4/95 Int. at 6.

[700] Id. at 6-7.

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him.[701] Heymann said he thought Casey should recuse.[702] Nathan recalled a discussion about whether responsibilities on the Hale case could be split between the USAO-EDAR and Main Justice as well as input from the Criminal Division that it should handle the entire matter.[703] Nathan did not remember a discussion about the new referrals during this meeting. He also said he did not know the substance of Casey's October 27 letter then.[704]

Jo Ann Harris, Assistant Attorney General for the Criminal Division, recalled the Deputy Attorney General's office wanted to get everything on the table, though there was a strong feeling before the meeting that Casey should be recused.[705] Casey strongly resisted recusal.[706] Casey expressed the view that the USAO-EDAR could handle the Whitewater-related investigations professionally and with integrity.[707] Harris recalled the Deputy Attorney General opted in favor of recusal because of the facts that Casey had been appointed by President Clinton, and that Casey's husband had prior involvement and association with both the President and Governor Tucker.[708] Harris also recalled that at the November 3 meeting, an effort was made to summarize

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[701] Id. at 7.

[702] Id.

[703] Id.

[704] Id.

[705] Harris 5/5/95 Int. at 3.

[706] Id.

[707] Id.

[708] Id.

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the different RTC referrals.[709] To the best of her recollection, she did not then know of the existence of C-0004; she thought the first she heard of the first referral was after the Mackay team (the team assigned by Main Justice to succeed USAO-EDAR) went to Arkansas to take over the Whitewater matters.[710] Even then, she believed that she first learned about it through newspaper accounts.[711]

According to Joseph Gangloff, Principal Deputy Chief of the Public Integrity Section, his impression at the time of the November 3, 1993 meeting was that a decision had already been made at DOJ's highest levels to handle the Madison Guaranty and Hale matters, and the meeting was called with the specific purpose of having Casey recuse herself.[712] Casey was given a chance to explain her position.[713] She made the point that there was no evidence of any wrongdoing on President Clinton's part, her recusal would create the impression that something sinister was going on, and the President was involved. [714] Gangloff also recalled that someone made the point that it would be better for her to recuse herself than to be directed to do so by DOJ.[715] Casey acquiesced and was given the opportunity to request recusal.[716]

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[709] Id.

[710] Id. at 4.

[711] Id.

[712] Gangloff 3/29/95 Int. at 6.

[713] Id. at 7.

[714] Id.

[715] Id.

[716] Id.

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Anthony Moscato, Director of the EOUSA, recalled that Casey resisted recusal and Moscato supported her.[717] Moscato thought she was honest and capable enough to handle the Madison Guaranty and Hale matters and did not have to recuse.[718] Moscato recalled the nine new referrals had been received from the RTC before this meeting; he did not remember a specific discussion of their merits, but remembered that Casey did not think much of them.[719] There was a discussion of the referrals -- perhaps not all of them, but more than one or two.[720] Casey would summarize the one at hand, and then the group would move on.[721] Moscato recalled the names of the Clintons and Tucker coming up.[722] Heymann wanted Casey to recuse.[723] Heymann did not direct Casey to recuse; however, it was clear the Department thought she should do so.[724] After the meeting, Moscato thought Casey was angry and felt pushed.[725] Casey thought she would have to recuse and did not think she should have to do so.[726] Moscato felt that Casey's resistance to recusal was for purely honorable reasons.[727]

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[717] Moscato 1/18/95 Int. at 8.

[718] Id.

[719] Id.

[720] Id.

[721] Id.

[722] Id.

[723] Id.

[724] Id.

[725] Id. at 9.

[726] Id.

[727] Id.

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Larry Urgenson, Acting Deputy Assistant Attorney General for the Criminal Division, expressed the view that Casey should recuse herself from all Whitewater-related matters.[728] He remembered that Casey was concerned that her recusal would create the wrong impression and reflect in a negative manner on her reputation for objectivity and professionalism.[729] She felt that her office could professionally and ethically handle most of the ongoing investigations.[730] Urgenson remembered that Casey felt she had to recuse herself from all matters involving Clinton campaign issues, but that she had no problem handling any of the Madison Guaranty or McDougal investigations.[731] The decision was made that all pending investigations should be turned over to the Fraud Section.[732]

For her part, Casey said by the time of the meeting, she had "pretty much" made up her mind to recuse, but she was concerned that recusal would create a problem for her with the other attorneys in her office and that they would be upset if she turned everything over to Justice.[733] She recalled the meeting participants were very concerned about the allegations relating to the Clintons.[734] At the beginning of the meeting, Casey briefed the group on the details of the new

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[728] Urgenson 3/27/95 Int. at 6.

[729] Id.

[730] Id.

[731] Id. at 6-7.

[732] Id. at 7.

[733] Casey 5/10/95 Int. at 13.

[734] Id.

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referrals.[735] There was some discussion about splitting responsibilities between her office and the Fraud Section at Justice.[736] Justice officials expressed as their major concern her recusal on matters involving the Clintons.[737] Casey expressed her view that the Clintons were not responsible for her appointment as U.S. Attorney; rather, it was Senator Bumpers.[738] She did resist recusal, but her primary reason for doing so was that she did not want to be perceived by her staff as giving away everything and not being capable of handling cases and problems that arose in her District.[739]

On November 5, 1993, Casey wrote a recusal letter, requesting recusal of herself and her office.[740] After the meeting, she returned to Annapolis to complete her orientation meeting. [741] Once that was over, either on Thursday or Friday of that week, she went back to Washington for additional meetings.[742] Casey wrote the letter while in Washington on the latter trip; she did not have the facilities to do it before then.[743] She wrote a recusal letter and had her secretary in Little Rock type it and fax it to Casey in Washington.[744] Casey then reviewed it, signed it, and hand

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[735] Id.

[736] Id.

[737] Id.

[738] Id.

[739] Id. at 13-14.

[740] Casey 6/29/95 GJ at 6, 66.

[741] Id. at 66.

[742] Id.

[743] Id.

[744] Casey 5/10/95 Int. at 14.

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delivered it to Nathan's office on Friday.[745] She returned to Little Rock on Friday night.[746]

F. Back to Main Justice.

The Mackay Team Took Over.

Main Justice assigned three Fraud Section trial attorneys to take over the Hale/Madison Guaranty matters: Donald Mackay, Jim Nixon, and Dwight Bostwick.[747] Mackay made his first trip to Little Rock on November 8, 1993.[748] Before the trip, he was given summaries of the nine new Madison Guaranty referrals from someone in the EOUSA.[749] At that time, he was told nothing about the C-0004 referral.[750] He believed that he first learned about C-0004 during his first trip to Little Rock.[751] Casey told him there was a letter from Keeney or someone else within the Criminal Division, stating there was no reason for a recusal of USAO-EDAR and the Division would not have a problem if the District decided to take no additional action concerning

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[745] Id.

[746] Id. It should be noted that at just about the same time Casey recused, Department of Justice official Webb Hubbell recused himself and his entire office on any pending matter "dealing with Madison Guaranty Savings and Loan or Mr. and Mrs. James McDougal." Memo from Webb Hubbell, The Associate Attorney General to The Attorney General, Deputy Attorney General, Acting Assistant Attorney General, for Criminal Division (Nov. 3, 1993) (Doc. No. 004778).

[747] Mackay 5/4/95 Int. at 1-3.

[748] Id. Nixon and Bostwick did not accompany him on this trip. Id.

[749] Id. at 5.

[750] Id.

[751] Id.

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the referral.[752] Mackay recalled being upset that no one had previously told him about C-0004, but he did not make an issue out of that fact.[753] He recalled that he got a copy of the first Referral from the FBI in Little Rock.[754] He looked it over and remembered thinking to himself that C-0004 ought to be reopened for two reasons.[755] First, in his mind, there was sufficient information in it to warrant additional investigation.[756] Second, its open status would make it unavailable for media publication.[757] The Mackay team reopened C-0004.[758]

During Mackay's first trip to Little Rock, Casey introduced him to Jackson, who Mackay learned was the only person in the USAO-EDAR with institutional knowledge about the investigations.[759] Mackay asked for the case file involving the first prosecution of McDougal; Jackson said he threw the file away when the USAO moved its office.[760] Mackay later reconstructed the file from FBI records.[761] Mackay also asked for the entire Hale file; the only thing of substance in it was the indictment.[762]

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[752] Id. at 5-6.

[753] Id. at 6.

[754] Mackay 6/27/95 GJ at 18.

[755] Id.

[756] Id.

[757] Id.

[758] Id.

[759] Mackay 5/4/95 Int. at 6.

[760] Id.

[761] Id.

[762] Id. at 6-7.

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Mackay stayed overnight during his first trip to Little Rock; on the second day of his visit, he met with Whitehead, Irons, and Reign of the FBI.[763] It was either at this time or at a later date that Irons told Mackay about problems the FBI had had with the USAO, and in particular with Jackson, among others.[764] Nixon also spoke about problems the Mackay team uncovered about how Jackson handled the Hale investigation.[765]

One of the issues the Mackay team and the Little Rock FBI had to deal with was records production from the RTC.[766] During November 1993, Mackay traveled to Kansas City to deal with the records problem.[767] Ken Donohue, an RTC official from its headquarters in Washington, traveled with him.[768] L. Richard Iorio, a field investigations officer in Kansas City, recalled meeting with Mackay and others during this visit.[769] Iorio recalled that as an aside, he asked Mackay what he (Mackay) planned to do with C-0004.[770] Mackay responded that he planned to take another look at it.[771] Iorio recalled that he saw some kind of a note, which he believed may have been on a yellow "post-it" or on some other type of document, that said something to the

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[763] Id. at 7.

[764] Id.

[765] Nixon 5/1/95 Int. at 4.

[766] Mackay 5/4/95 Int. at 8.

[767] Id. at 9.

[768] Id.; Donohue 10/27/94 Int. at 1.

[769] Iorio 4/12/94 Int. at 8.

[770] Id.

[771] Id.

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effect that "We'd appreciate it if this thing would go away."[772] He did not know if the note was serious or not.[773] Iorio did not remember Mackay saying anything to the effect that he was sent to make the matter go away.[774]

Mackay denied telling anyone that DOJ wanted him to make C-0004 go away.[775] Mackay vaguely recalled that Iorio told him that C-0004 had been declined, and Iorio questioned why the RTC should believe that DOJ would move on the nine new referrals.[776] At that time, Mackay knew of the March 19, 1993 Keeney memorandum denying the request for recusal and stating the Criminal Division would not object to a declination of C-0004.[777] Mackay said he probably told Iorio about the Criminal Division's statement.[778]

The Mackay team took over and pursued the Hale plea negotiations.[779] Casey's office had insisted that Hale plead to at least one felony count. That stance had led to an impasse; Mackay wanted to rectify that situation, so he took a more flexible approach in subsequent negotiations.[780] His feeling was that if Hale came in and furnished substantial, credible information, then he

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[772] Id.

[773] Id.

[774] Id.

[775] Mackay 5/4/95 Int. at 11.

[776] Id.

[777] Id.

[778] Id.

[779] Id. at 17.

[780] Id.

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might agree to a misdemeanor plea.[781]

Bostwick was responsible for readying the Hale case for trial, and he recalled their approach was open-minded.[782] He wanted a proffer from Hale and did not want to close the door on negotiations.[783] Hale never gave a proffer to the Mackay team,[784] and he did not enter a plea until March 22, 1994, some two months after Robert Fiske became regulatory Independent Counsel.[785]

On January 11, 1994, close to the end of the Mackay team's involvement in the Hale/Madison Guaranty matters, Mackay met with the FBI in Little Rock to discuss the issuance of a number of grand jury subpoenas.[786] One of the entities discussed, as a potential recipient, was the Rose Law Firm.[787] Shortly after the meeting, Mackay left for Washington, D.C. and the FBI in Little Rock started serving the subpoenas on January 11, 1994; the Rose Law Firm, and Rick Massey, an attorney at the firm, were served on January 13, 1994.[788] Mackay told Irons to withdraw those subpoenas and not to proceed with two as yet unserved subpoenas on Betsey

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[781] Mackay 6/27/95 GJ at 52-53.

[782] Bostwick 5/2/95 Int. at 5.

[783] Id. at 4-5.

[784] Id. at 5.

[785] See Final Report of Robert B. Fiske Jr., Independent Counsel, In re: Madison Guaranty Savings and Loan Association at 32 (D.C. Cir. [Spec. Div.] Oct. 6, 1994)(under seal).

[786] Mackay 5/4/95 Int. at 12; Irons 2/14/95 Int. at 11-12; Hall 2/16/95 Int. at 7-8.

[787] Mackay 5/4/95 Int. at 12; Irons 2/14/95 Int. at 11-12; Hall 2/16/95 Int. at 8.

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Wright and Seth Ward.[789]

Mackay said he had discussed with Irons the need to obtain higher-level Justice approval before serving the relevant subpoenas.[790] At the time of his interview with this Office, he could not say for sure whether he mentioned the need for approval during meetings with the FBI.[791] Even if he did express the need for approval, he was not sure the FBI understood that it was to hold off on service of the subpoena on the Rose Law Firm.[792]

Irons recalled that at one point during the January 11 meeting, Mackay preferred to hold off on the Rose Law Firm, Massey, Wright, and Ward subpoenas.[793] In hindsight, Irons felt there may have been a misunderstanding -- not as to the service of the relevant subpoenas, but as to

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[788] Irons 2/14/95 Int. at 12. Between January 11 and 15, 1994, 29 grand jury subpoenas were served. See id.; see also Memo from Irons, FBI Little Rock, AR, to SAC, Little Rock, containing a list of individuals and companies to be subpoenaed (Jan. 12, 1994).

[789] Irons 2/14/95 Int. at 11.

[790] Mackay 5/4/95 Int. at 12. See United States Attorneys' Manual, Title 9 § 9-2.161(a) (Oct. 1, 1990) ("Policy with regard to the Issuance of Grand Jury or Trial subpoenas to Attorneys for Information Relating to the Representation of Clients").

[791] Mackay 5/4/95 Int. at 13.

[792] Id. at 12. Not long after the subpoenas were withdrawn, the media reported on alleged shredding of documents at the Rose Law Firm. Id. at 14. Mackay was of the view there was no nexus between the subpoena withdrawal and the shredding. Id. Regarding the subpoenas to Wright and Ward, Mackay said the Wright subpoena posed a potential problem and needed higher-level approval. Mackay 6/27/95 GJ at 67. He had previously been criticized for his desire to obtain such records, but the procedure later was approved about the time the Attorney General said she would appoint a Special Counsel for the Hale/Madison Guaranty matters. Mackay 5/4/95 Int. at 13. By the time of his grand jury appearance, Mackay did not remember standing down on the Ward subpoena, and could not think of why he would have done so. Mackay 6/27/95 GJ at 73-74.

[793] Irons 2/14/95 Int. at 11.

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Irons's authority to determine the timing of service.[794]

Hall also attended the January 11 meeting, and felt sure that Mackay approved the service of all the subpoenas on the list under discussion.[795] She also recalled that when the subpoenas were ordered withdrawn, Irons told her that Mackay said he did not authorize the service; she was not sure why they were withdrawn, but heard from someone, possibly Irons, that Mackay felt he needed proper DOJ authorization for the relevant subpoenas.[796]

Mackay testified that it was his decision alone to order withdrawal of the subpoenas.[797] No one tried to influence him or make any suggestions about that step, and he did not consult with anyone before ordering the withdrawal.[798] He recalled running into Carver on the same day as the withdrawal, and he told Carver what he had done.[799] Carver said something to the effect that he could have gotten the service ratified.[800] As it was too late, Carver told Mackay to "let it go."[801] Carver testified that because there were discussions under way for the appointment of a special counsel, he should have the freedom to choose what investigative paths to pursue

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[794] Id.

[795] Hall 2/16/95 Int. at 8.

[796] Id.

[797] Mackay 6/27/95 GJ at 73; Nixon 5/1/95 Int. at 8 (believed it was Mackay's decision to withdraw the subpoenas, and had no knowledge of the involvement of DOJ supervisors in the decision).

[798] Mackay 6/27/95 GJ at 73.

[799] Id. at 72-73.

[800] Id. at 73.

[801] Id.

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"unfettered and unimpeded by what the Criminal Division might do."[802] The withdrawn subpoenas ultimately were served, in February 1994, with the approval of the newly-appointed regulatory Independent Counsel, Mr. Fiske.[803]

IV. ANALYSIS

The Department of Justice's consideration of the RTC's criminal referral C-0004 raised the question of whether anyone took any action with a corrupt intent to delay a full investigation by the Department of Justice of the allegations in the referral in violation of 18 U.S.C. § 1505. The relevant portion of 18 U.S.C. § 1505 provided:

> Whoever corruptly, or by threats or force, or by any threatening letter or communication influences, obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law under which any pending proceeding is being had before any department or agency of the United States . . . shall be fined not more than $5,000 or imprisoned not more than five years, or both.

The evidence was insufficient to prove beyond a reasonable doubt that anyone took any action in violation of 18 U.S.C. § 1505 to corruptly delay or impede the full investigation of the referral.[804]

The evidence regarding the Little Rock U.S. Attorney's office's conduct following receipt of the referral would not support a conclusion that anyone corruptly delayed the investigation.

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[802] Carver 7/6/95 GJ at 103.

[803] Irons 2/14/95 Int. at 12.

[804] While these facts may also implicate 18 U.S.C. § 1503 (relating to obstruction of a grand jury proceeding), the Independent Counsel concluded that the evidence was insufficient to

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Certain actions were inconsistent with ordinary procedures by the FBI in Little Rock and the U.S. Attorney's Office. The FBI did not notify FBI Headquarters of receipt of the referral and did not open a "case" for investigation. The U.S. Attorney's office also did not notify Main Justice of the receipt of the referral as a sensitive matter (because it mentioned the Clintons) or enter it into its own internal computer log.

But the FBI in Little Rock had notified FBI headquarters on August 26, 1992, before receipt of the referral, of its expected contents, including the reference to the Clintons. Also, the investigation in Little Rock appeared to be generally proceeding along a reasonable investigative path, given the timing of the referral and the involvement of the Clintons simply as potential witnesses.

There was no evidence the U.S. Attorney's decision to conduct a limited investigation was improper. The limited investigation authorized by the U.S. Attorney was ratified by officials at Main Justice, including the Assistant Attorney General for the Criminal Division, and by officials at FBI headquarters, once they were told of the history of allegations against Madison Guaranty and Jim McDougal and the limited nature of the involvement of the Clintons as witnesses.

The Independent Counsel also concluded the evidence about the handling by officials at Main Justice of the referral following the election of President Clinton was insufficient to prove beyond a reasonable doubt that anyone obstructed justice in violation of 18 U.S.C. § 1505. The

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prove any corrupt intent to obstruct either an executive branch proceeding or a grand jury proceeding.

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evidence about the analysis conducted by Mark MacDougall in the Fraud Section includes contradictory testimony on the scope of his assignment, the reason for the assignment to him, and the materials he was supposed to use in his analysis. Such contradictory evidence simply does not support any inference that anyone obstructed justice.

There was also no evidence that Paula Casey's resistance to recusal or Fletcher Jackson's handling of the referrals constituted obstruction of justice. Department of Justice witnesses to Paula Casey's explanation for her reasons for not recusing testified that her decision was motivated by the merits. Jackson's handling of the referrals, including his difficult relations with the FBI and the destruction or loss of records, although irregular, also were not improperly motivated.

Similarly, although MacKay was criticized for withdrawing the subpoenas to the Rose Law Firm, there is no evidence the withdrawal of the subpoena was corruptly motivated to permit the destruction of records before a new subpoena could be issued. MacKay's explanation of his decision to withdraw the subpoenas -- they required approval from senior officials -- was consistent with Department of Justice policy, and there is no evidence of any other improper motivation.

V. SUMMARY CONCLUSION

In sum, speculation about irregular conduct by various officials in the Department of Justice and the FBI was ultimately not substantiated but did raise serious questions that required substantial investigation in order to be resolved. The handling of the referrals occurred in a highly politicized environment of the 1992 Presidential election campaign and the subsequent

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transition to a new administration of a different political party. Various officials were influenced by the election to handling the referrals in a manner that they might not have in the absence of the campaign.

The transition also influenced the way the referral was handled. Delays resulted from the lack of senior appointments to the new administration which also contributed to confusion about who should make a decision on the referral for the Department, as well as what that decision actually should be. The delay and confusion ultimately undermined confidence in the proper handling of the referral, raising suspicions of obstruction of justice. Whatever the reasonableness of these suspicions, the investigation found that they were entirely unsubstantiated by the evidence. The matter is now closed.

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PART F

THE DEPARTMENT OF JUSTICE'S HANDLING OF THE RTC CRIMINAL REFERRALS AND THE CONTACTS BETWEEN THE WHITE HOUSE AND THE DEPARTMENT OF THE TREASURY

Chapter 2:

White House Treasury Contacts

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I. INTRODUCTION

This Office investigated contacts between officials from the Department of the Treasury and the White House about the Resolution Trust Corporation's ("RTC") criminal referrals on Madison Guaranty to determine if those contacts represented an effort to influence unlawfully the referrals' handling. These contacts appeared to disclose to potential witnesses the existence of an investigation of which under normal circumstances they might be unaware.[805] Such an effort, if proved, would constitute a violation of 18 U.S.C. § 1505 relating to unlawful obstruction of executive branch proceedings.

This Office also investigated whether Deputy Treasury Secretary Roger Altman violated federal criminal law in his unsworn statements to Congress relating to his contacts with White House officials, including whether those statements and the evidence about them showed Altman violated 18 U.S.C. § 1001, involving knowingly false and material statements to any "department or agency of the United States."

II. FINDINGS

The Independent Counsel concluded the evidence on contacts between Treasury Department officials and White House officials was insufficient to prove beyond a reasonable doubt that anyone in the White House or the Treasury Department took any action intended to influence unlawfully the handling of the RTC criminal referrals. The Independent Counsel declined to prosecute anyone for obstruction of the investigation under 18 U.S.C. § 1505.

With respect to the statements of Deputy Secretary Altman, the Independent Counsel concluded that unsworn statements to Congress, whether knowingly false and material to

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Congress's investigation, did not, as a matter of law, violate 18 U.S.C § 1001, as in effect at the time of Deputy Secretary Altman's statements. In light of this conclusion, the Independent Counsel drew no conclusions regarding whether the statements themselves were knowingly false and material. The Independent Counsel declined prosecution of Deputy Secretary Altman for his statements to Congress about his contacts with White House officials over the RTC's criminal referrals.

III. FACTUAL SUMMARY

A. Treasury Department Officials Had No Significant Contact with White House Officials Relating to the First Criminal Referral before September 1993.

During the 1992 presidential campaign, media reports surfaced about Madison Guaranty and possibly improper diversions of funds during the 1980s to the benefit of Governor Clinton and Mrs. Clinton.[806] After a review of the institution's practices, L. Jean Lewis, an RTC investigator, made a criminal referral -- number C-0004 -- to federal law enforcement authorities in Little Rock in September 1992.[807] As described earlier in this Report, referral C-0004 was the first of what would become ten criminal referrals arising from Madison Guaranty's failure. Referral C-0004 named James and Susan McDougal as suspects and Governor and Mrs. Clinton as potential witnesses.[808]

On March 15, 1993, after Albert Casey's resignation as Chief Executive Officer of the RTC, Roger Altman, Deputy Secretary of the Treasury in the Clinton Administration, was

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[805] Cf. United States v. Proctor & Gamble Co., 356 U.S. 677, 681 n.6 (1958) (reciting the policies underlying grand jury secrecy).

[806] Jeff Gerth, Clintons Joined S&L: Operator In an Ozark Real-Estate Venture, N.Y. Times, Mar. 8, 1991 at A1.

[807] Lewis 5/18/95 GJ at 4, 7-15, 19.

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appointed to serve as Interim CEO of the RTC.[809] Altman held his first staff meeting with RTC personnel on Tuesday, March 23, 1993.[810] Present at that meeting, among others, was William H. Roelle, Senior Vice President and Chief Financial Officer of the RTC.[811]

Roelle testified that at that meeting, Altman said he wanted to be told about any "high visibility" or "major" issues.[812] After the meeting, Roelle, who knew about criminal referral C-0004, told Altman about it, mentioning that it was related to Madison Guaranty and listed the President and Mrs. Clinton as witnesses.[813] Roelle said he handed Altman a copy of the referral, and that Altman looked at its front briefly but did not appear to read it.[814] Altman then handed the referral back and thanked Roelle.[815]

The evening of the March 23 meeting and the next morning, two facsimiles were sent

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[808] RTC Crim. Ref. No. C-0004 (Aug. 31, 1992).

[809] Altman had known President Clinton for many years; the two met at Georgetown University when they were students there in the late 1960s. Altman 9/12/95 GJ at 13-14. Altman's appointment as Interim CEO of the RTC was made pursuant to the Vacancy Act, 5 U.S.C. § 3341-49, pending appointment of a permanent CEO of the agency. Under the Vacancy Act as it applied in Altman's case, his appointment was to lapse in 120 days, unless within that time the President nominated a candidate for permanent CEO of the RTC. Within Altman's first 120 days as Interim CEO, President Clinton nominated Stanley Tate to the CEO post. At the end of 1993, when Tate withdrew his nomination, the law permitted Altman to remain in the Interim post for an additional 120 days after Tate's withdrawal. Altman remained in the Interim CEO post until March 30, 1994, when his Vacancy Act term expired. Altman 7/11/94 Treas. IG at 6-7; Altman 5/13/94 Statement to the Office of the Independent Counsel at 6-7, 11.

[810] Altman Calendar (Mar. 23, 1994) (Doc. No. 312-DC-00000010).

[811] Roelle 7/20/94 Senate Banking Comm. Depo. at 11-12.

[812] Id. at 34.

[813] Roelle 2/24/95 Int. at 2; see also Roelle 7/20/94 Senate Banking Comm. Depo. at 34-35.

[814] Roelle 2/24/95 Int. at 2-3.

[815] Id. at 3.

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from Altman's office to the office of Bernard Nussbaum, Counsel to the President.[816] The March 23 facsimile had copies of two New York Times articles published a year earlier.[817] One article was a March 9, 1992 article about events after Jeff Gerth's New York Times article on Madison Guaranty and Whitewater.[818] The other article was about the Office of Thrift Supervision's professional liability lawsuit against the New York-based law firm Kaye, Scholer, Fierman, Hays & Handler.[819] The March 24, 1993 facsimile had the same material from the night before, plus a portion of Gerth's article.[820] The facsimiles did not refer to the criminal referrals.

Altman told this Office that he did not remember hearing about criminal referral C-0004 from Roelle on March 23, 1993,[821] or faxing the New York Times articles to Nussbaum.[822] Altman said he did not learn about the RTC criminal referrals until the latter part of 1993.[823] Similarly, Nussbaum neither remembered receiving the facsimiles nor learning about the criminal

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[816] Facsimile from Roger Altman, Deputy Secretary of the Treasury, to Bernard Nussbaum, Counsel to the President (Mar. 23, 1993) (Doc. Nos. 009-DC-00000034 through 36); see also Facsimile from Roger Altman, Deputy Secretary, of the Treasury, to Bernard Nussbaum, Counsel to the President (Mar. 24, 1993) (Doc. No. 009-DC-00000005 through 10).

[817] Facsimile from Roger Altman, Deputy Secretary of the Treasury, to Bernard Nussbaum, Counsel to the President (Mar. 23, 1993) (Doc. Nos. 009-DC-00000034 through 36).

[818] Gwen Ifill, Clinton Defends Real Estate Deal, N.Y. Times, Mar. 9, 1992, at A13.

[819] Id.; see also Stephen Labaton, Law Firm Will Pay a $41 Million Fine in Savings Lawsuit, N.Y. Times, Mar. 9, 1992, at A1.

[820] Jeff Gerth, Clinton Joined S&L Operator in an Ozark Real Estate Venture, N.Y. Times, Mar. 8, 1992, at A1.

[821] Altman 9/7/95 Int. at 1; Altman 6/1/94 Fiske Int. at 1; Altman 7/11/94 Treas. IG at 19-23; Altman 5/13/94 Statement to the Office of the Independent Counsel at 8.

[822] Altman 7/22/94 Senate Banking Comm. Depo. at 49; Altman 9/7/95 Int. at 2.

[823] Id. at 59-60; Altman 9/7/95 Int. at 3. As more fully described below, by that time nine additional Madison Guaranty-related criminal referrals had been sent to the Department of Justice.

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referrals until the fall of 1993.[824] Nussbaum also did not remember speaking with Altman about Madison Guaranty or the criminal referrals around the time the faxes were sent.[825]

The OIC found no additional evidence tending to show that Altman told Nussbaum about the first criminal referral in March 1993. No relevant witness (save for Roelle) had any memory that Altman knew of C-0004 then, that he had any conversation with Roelle about it, or that Altman had any contact with Nussbaum about it.

B. Treasury Department Officials Conferred with White House Officials after the Issuance of Nine Additional Criminal Referrals about Madison and the Clintons in September 1993.

In the early fall of 1993, the RTC issued nine more criminal referrals about Madison Guaranty.[826] One of these listed the Clintons as potential witnesses.[827] Another named the "Bill Clinton Political Committee Fund Account" as a potential subject.[828] The new referrals focused on, among others, the McDougals and Jim Guy Tucker, the Governor of Arkansas.[829]

Roelle learned about the new referrals in late September 1993.[830] On Monday, September

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[824] Nussbaum 7/23/94 Senate Banking Comm. Depo. at 73-74.

[825] Id. at 73-77.

[826] See RTC Crim. Ref. Nos. C–0004 (Aug. 31, 1992), 730CR0198 (Aug. 4, 1993), 730CR0190 (Aug. 12, 1993), 730CR0192 (Aug. 13, 1993), 730CR0195 (Aug. 15, 1993), 730CR0196 (Aug. 18, 1993), 730CR0203 (Aug. 30, 1993), 730CR0199 (Aug. 30, 1993), 730CR0210 (Sept. 17, 1993), 730CR0211 (Sept. 23, 1993).

[827] See RTC Crim. Ref. No. 730CR0192 at 6 (Aug. 13, 1993).

[828] See RTC Crim. Ref. No. 730CR0196 at 5 (Aug. 18, 1993).

[829] See RTC Crim. Ref. Nos. 730CR0198 (Aug. 4, 1993), 730CR0190 (Aug. 12, 1993), 730CR0192 (Aug. 13, 1993), 730CR0195 (Aug. 15, 1993), 730CR0196 (Aug. 18, 1993), 730CR0203 (Aug. 30, 1993), 730CR0199 (Aug. 30, 1993), 730CR0210 (Sept. 17, 1993), 730CR0211 (Sept. 23, 1993).

[830] Roelle 7/20/94 Senate Banking Comm. Depo. at 35; Roelle 2/24/95 Int. at 3; see also Roelle 5/25/94 Int. at 2.

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27, 1993, Roelle called Altman and described some of the new material.[831] Altman (who is not a lawyer) said he did not understand, and asked Roelle instead to brief Jean Hanson, the Treasury Department's General Counsel.[832]

Roelle and Hanson spoke that same day.[833] Hanson said Roelle briefly described the nine referrals, the reference to the Clintons as potential witnesses, and said the referrals were sent from the RTC's Kansas City office to its Washington headquarters, from which they would be sent to the Department of Justice.[834] He distinguished these new referrals from the previous referral (C-0004) sent to the Justice Department about Madison Guaranty mentioning the Clintons, suggesting additional investigation might further implicate them.[835] Roelle also said one of the referrals discussed Governor Tucker and another was about a possible fund-diversion conspiracy between McDougal and the "1985" Clinton gubernatorial campaign.[836] Roelle told

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[831] Hearings Relating to Madison Guaranty S&L and the Whitewater Dev. Corp. - Washington, DC Phase Before the Senate Comm. on Banking, Housing, and Urban Affairs, 103rd Cong. 50 (Aug. 1, 1994) (testimony of W. Roelle) [hereinafter "Senate Banking Comm. Hearing"]; Roelle 2/24/95 Int. at 3; see Roelle 7/20/94 Senate Banking Comm. Depo. at 40-41.

[832] Roelle 7/20/94 Senate Banking Comm. Depo. at 44; Senate Banking Comm. Hearing, supra note 831, at 52 (Aug. 1, 1994) (testimony of W. Roelle). Altman claimed he told Roelle the referral should be handled according to normal procedure. 7/11/94 Treas. IG at 19-20; Altman 6/1/94 Fiske Int. at 1; Altman 3/15/94 Fiske Int. at 2; Altman 9/7/95 Int. at 3; Altman 5/13/94 Statement to the Office of the Independent Counsel at 8. Altman wanted nothing to do with the referral mentioning the Clintons because of its sensitivity. Altman 7/22/94 Senate Banking Comm. Depo. at. 67-68; Altman 7/11/94 Treas. IG at 25; Altman 6/1/94 Fiske Int. at 5. Altman assumed Roelle told him about the referral because it would become public. Altman 7/22/94 Senate Banking Comm. Depo. at 66; Altman 7/11/94 Treas. IG at 20; Altman 3/22/94 Fiske GJ at 19.

[833] See Hanson call sheet (Sept. 27, 1993) (Doc. No. 007-DC-00000371).

[834] Roelle 7/14/94 Senate Banking Comm. Depo. at 105; Hanson 7/11/94 Treas. IG at 24, 30; Hanson 9/27/95 Int. at 4; Hanson 3/16/94 Fiske Int. at 2-3.

[835] Hanson 7/11/94 Treas. IG at 30.

[836] Id. at 46; Hanson 3/16/94 Fiske Int. at 2; Hanson 9/27/95 Int. at 4.

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Hanson it was likely the referrals would become public.[837]

According to Roelle, after Hanson said she planned to brief Altman about the referrals, he cautioned her that no one other than Altman should be told.[838] Hanson did not remember Roelle saying that.[839] Roelle said that Hanson asked if Altman should see the referrals.[840] Roelle said he told her no, and said no one should look at them except in the ordinary course of business.[841]

That same day Hanson told Altman about her conversation with Roelle.[842] Hanson testified that from her conversation with Altman, she thought she had been tasked with informing Nussbaum about the referrals so that the White House would be prepared to meet any press inquiries in the event the substance of the referrals became public.[843]

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[837] Hanson 7/14/94 Senate Banking Comm. Depo. at 106-07; Hanson 7/11/94 Treas. IG at 25-26.

[838] Roelle 7/20/94 Senate Banking Comm. Depo. at 45; Roelle 2/24/95 Int. at 4.

[839] Hanson 9/27/95 Int. at 5.

[840] Roelle 2/24/95 Int. at 4.

[841] Id.

[842] Hanson 9/27/95 Int. at 6. Altman said he did not remember assigning Hanson to brief the White House on the referrals, but may have because Roelle said the referrals were likely to be discussed by the press. Altman 9/12/95 GJ at 24-25; Altman 9/7/95 Int. at 3-4. He also did not remember learning that Hanson actually did brief White House officials on the referrals, and that Hanson did not report back to him on her meeting at the White House. Altman 9/12/95 GJ at 25, 27-28.

[843] Hanson 9/27/95 Int. 6-8.

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C. Treasury Officials Met with White House Officials about the Referrals.

1. Jean Hanson First Met with Bernard Nussbaum about the Referrals September 29, 1993.

On September 29, 1993, around 6:30 p.m., after a meeting with other Treasury officials in Nussbaum's office about other matters,[844] Hanson initiated a private conversation with Nussbaum.[845] Nussbaum said Hanson told him the RTC was making or had made a number of referrals about an Arkansas S&L.[846] He remembered Hanson said one of the referrals was about checks sent to a Clinton gubernatorial campaign,[847] so the Clintons were mentioned in the referrals as possible witnesses.[848] Nussbaum testified Hanson said she was informing the White House about the referrals to permit it to prepare for press inquiries that might follow from public disclosure of the referrals.[849] At Nussbaum's request, Hanson repeated the information to associate White House Counsel, Clifford Sloan, whom Nussbaum had asked to join the meeting.[850]

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[844] Hanson 7/14/94 Senate Banking Comm. Depo. at 156-60; Hanson 3/16/94 Fiske Int. at 6-7; Hanson 9/29/95 GJ at 21; Hanson 4/21/94 Fiske GJ at 15.

[845] Nussbaum 3/17/94 Fiske GJ at 19-22; Hanson 7/14/94 Senate Banking Comm. Depo. at 156-60. Nussbaum's associate, Clifford Sloan, was present at the end of the meeting. Hanson Id. at 160.

[846] Nussbaum 3/17/94 Fiske GJ at 20. He did not remember the name Madison Guaranty being mentioned. Id.

[847] Id.

[848] Id. at 20-21. Nussbaum did not remember if Hanson mentioned anyone else named in the referrals, such as Governor Tucker. Nussbaum 7/23/94 Senate Banking Comm. Depo. at 91.

[849] Nussbaum 3/17/94 Fiske GJ at 21.

[850] Id. at 21-22; Nussbaum 6/13/95 GJ at 16. Sloan said Hanson told him that her briefing White House staff was to help them respond if the referrals became public. See Sloan 4/7/94 Fiske GJ at 12. Nussbaum and Sloan both remembered Hanson said she thought Altman had already sent Nussbaum some materials on the issue, but Nussbaum said he did not remember Altman sending him anything. Nussbaum 6/13/95 GJ at 18-19; Sloan 5/24/95 GJ at 13-14.

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After the initial meeting between Hanson, Nussbaum, and Sloan, and before the next meeting between Treasury and White House Officials on October 14, the following occurred: 1) Bruce Lindsey, a longtime friend and advisor to the President and Director of Presidential Personnel, was told about the referrals; 2) Associate Counsel to the President Neil Eggleston was brought into the matter by Sloan; 3) the RTC and Treasury received press inquiries about the referrals, which were passed on to the White House by Hanson and were the subject of ongoing discussion between officials at the RTC and Treasury; 4) Lindsey told President Clinton about the referrals (or at least about press inquiries regarding the referrals); 5) President Clinton then met with Governor Tucker, one of the subjects of the criminal referrals; 6) the referrals were sent to the United States Attorney in Little Rock over objections from some RTC officials; and 7) press inquiries about the referrals increased, resulting in a large meeting at the White House on October 14.

2. Bruce Lindsey Was Briefed on the Referrals.

After the discussion between Hanson, Nussbaum, and Sloan, Sloan briefed Lindsey about the referrals and the press inquiries.[851] Sloan told Lindsey there were referrals involving Madison Guaranty, and that the 1985 Clinton campaign was mentioned.[852] Lindsey did not

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Nussbaum asked Hanson to keep Sloan informed on the referrals or press inquiries. Nussbaum 6/13/95 GJ at 16; Sloan 4/5/95 Int. at 3.

[851] Nussbaum 6/13/95 GJ at 17-18. Nussbaum also thought that he spoke to Lindsey, but Lindsey did not remember Nussbaum speaking to him about either referral or the September 29, 1993 meeting with Hanson. Lindsey 3/24/94 Fiske GJ at 9-10. Sloan did not remember separately briefing Lindsey, but said the September 29, 1993 meeting might have come up in later conversations with Lindsey. Sloan 5/24/95 GJ at 21.

[852] Lindsey 7/21/94 Senate Banking Comm. Depo. at 34; Lindsey 3/24/94 Fiske GJ at 9-11.

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remember learning during this briefing that the Clintons were mentioned in the referrals.[853] Lindsey may have asked Sloan to keep him updated.[854] Lindsey said he did nothing with the information.[855]

3. Clifford Sloan Discussed the September 29 Meeting with Neil Eggleston.

After the September 29, 1993 White House meeting, Sloan told Eggleston about the meeting, and the two considered whether it was appropriate for the White House to receive information about the referrals.[856] After some legal research, they decided the meeting with Hanson did not violate any statutory or regulatory prohibitions.[857] Sloan also discussed the legal issues with Nussbaum.[858] Nussbaum did not see a legal problem with the White House's receiving information about the referrals,[859] although Nussbaum did not remember this conversation.[860]

Eggleston testified that Sloan was sent to speak with Hanson to figure what she meant when she said Altman previously had sent some material to Nussbaum.[861]

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[853] Lindsey 3/24/94 Fiske GJ at 9-11.

[854] Lindsey 7/21/94 Senate Banking Comm. Depo. at 36; Lindsey 3/24/94 Fiske GJ at 10-11.

[855] Lindsey 3/24/94 Fiske GJ at 10.

[856] Sloan 4/5/94 Fiske Int. at 4-5; Sloan 4/7/94 Fiske GJ at 15-16; Eggleston 3/31/94 Fiske GJ at 15-19; Eggleston 5/15/94 Treas. IG at 11-12.

[857] Sloan 4/5/94 Fiske Int. at 4-5; Sloan 4/7/94 Fiske GJ at 16.

[858] Sloan 4/5/94 Fiske Int. at 5; Sloan 4/7/94 Fiske GJ at 18.

[859] Nussbaum 3/17/94 Fiske GJ at 36.

[860] Id. at 37.

[861] Eggleston 7/19/94 Senate Banking Comm. Depo. at 19-20.

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4. The RTC Received Press Inquiries about the Referrals.

In August and September, Stephen J. Katsanos, an RTC press spokesman, received frequent inquiries from Susan Schmidt, a Washington Post reporter, about the Rose Law Firm ("Rose"), its representation of Madison Guaranty, the involvement of Seth Ward (Webster Hubbell's father-in-law), and Rose's potential conflict of interest in representing Madison Guaranty.[862] In that time period, Katsanos learned about referral C-0004 and the additional referrals.[863] Katsanos said Schmidt alleged that the RTC's Washington, D.C. headquarters was blocking the new referrals.[864]

Katsanos testified that around October 1, 1993, he called John ("Jack") DeVore, a press spokesman at the Treasury Department, and told DeVore about the press inquiries.[865] Katsanos testified that he probably told DeVore that Altman or Hanson should be briefed about the press inquiries.[866]

When Hanson received a copy of an internal RTC circular, the "RTC Early Bird," on September 30, she recognized the reference to press inquiries about the Rose Law Firm really referred to the criminal referrals involving Madison Guaranty, the Clintons, and Governor Tucker

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[862] Katsanos 4/26/95 GJ at 14, 19-23.

[863] Katsanos 4/26/95 GJ at 21; Katsanos 7/6/94 Treas. IG at 16-17.

[864] Katsanos 7/6/94 Treas. IG at 28; Katsanos 6/2/94 Int. at 2.

[865] Katsanos 6/2/94 Fiske Int. at 4; Katsanos 7/12/94 Senate Banking Comm. Depo. at 75-78.

[866] Katsanos 6/2/94 Fiske Int. at 4; Katsanos 7/12/94 Senate Banking Comm. Depo. at 78-79. DeVore did not remember those conversations. DeVore 4/14/94 Fiske GJ at 20.

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(even though they were not explicitly named in the Early Bird).[867] Hanson sent Altman a copy of the September 30, 1993 RTC Early Bird that same day, under a cover memorandum about "The Rose Law Firm."[868] Hanson's memorandum read:

> Steve Katsanos has talked with Sue Schmidt (See attached RTC Early Bird).
>
> I have spoken with the Secretary and also with Bernie Nussbaum and Cliff Sloan.
>
> I have asked Bill Roelle to keep me informed. Is there anything else you think we should be doing?[869]

Altman did not remember receiving the September 30 Early Bird, but did not deny that he may have received it.[870] He did not remember talking with Hanson about any conversation she had with Nussbaum and Sloan, and he did not know what Hanson's reference to her conversation with them or Secretary Bentsen meant.[871] Altman thought Hanson's memorandum meant she had spoken with the people named in it about the press inquiries, not that she briefed them about Madison Guaranty or Whitewater.[872] Roelle also called Hanson and said Schmidt of the Washington Post had contacted the RTC's Kansas City office in an unsuccessful effort to obtain

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[867] See Memo from Jean Hanson, General Counsel for Treasury Department to Roger C. Altman, Deputy Secretary of the Department of Treasury (Sept. 30, 1993) (Doc. No. 007-DC-00000154).

[868] See id.

[869] See id. Although Hanson did not remember preparing and sending the September 30 memorandum to Altman, she did not doubt that she sent it because she had signed it. Hanson 3/16/94 Fiske Int. at 8. Hanson did not remember ever speaking with Altman about the press inquiries in the September 30 Early Bird, nor did she remember speaking with Treasury Secretary Lloyd Bentsen, as indicated by the memorandum. Hanson 10/10/95 Int. at 8. Secretary Bentsen did not remember speaking with Hanson about the subject in the Early Bird in the fall 1993. Bentsen 7/26/94 Fiske Int. at 12-14; Bentsen 7/12/95 Int. at 4-5.

[870] Altman 9/12/95 GJ at 30; Altman 7/25/94 Senate Banking Comm. Depo. at 359.

[871] Altman 9/12/95 GJ at 27-28.

[872] Id. at 30-32.

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the unlisted home telephone numbers of RTC investigators who had worked on the referrals.[873]

5. Jean Hanson Had a Conversation with Clifford Sloan on September 30.

On September 30, 1993, Hanson and Sloan spoke by phone and Sloan took notes.[874] Sloan's notes[875] show that Hanson said the material previously sent to Nussbaum was not about the referrals but appeared to have been the March 1992 New York Times articles faxed from Altman's office.[876] Sloan's notes on this point read: "Altman's files -- NYT -- 3/9/92 Altman

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[873] Hanson 4/21/94 Fiske GJ at 19; Hanson 7/11/94 Treas. IG at 72-73. Hanson did not remember telling Altman about this though it would have been her practice to do so. Hanson 4/21/94 Fiske GJ at 20; Hanson 7/11/94 Treas. IG at 74. Altman did not remember learning about Schmidt's work in Kansas City, but he thought that Roelle would have told him about that type of development. Altman 9/12/95 GJ at 34-35.

[874] See Sloan's handwritten notes (Sept. 30, 1993) (Doc. No. 011-DC-00001086). Sloan thought that Hanson placed the call. Sloan 4/7/94 Fiske GJ at 18-19. He thought he wanted Eggleston in on the call but could not remember if Eggleston did. Sloan 4/7/94 Fiske GJ at 19-20. Hanson did not remember the September 30, 1993 Sloan conversation, or any conversation with the White House about the Schmidt inquiry Roelle had called her about. Hanson 4/21/94 Fiske GJ at 20-22. Her call sheet for that date included the names of Sloan and Eggleston, but Hanson said those notations did not reflect an actual conversation but rather served as "to do" items. Hanson 9/27/95 Int. at 8.

Hanson remembered a conversation with Altman soon after her conversation with Roelle, which agrees with some of the information contained in Sloan's notes. Hanson 4/21/94 Fiske GJ at 13; Hanson 9/29/95 GJ at 15-16; Sloan's handwritten notes (Sept. 30, 1993) (Doc. No. 011-DC-00001086). As Hanson remembered it, this discussion took place in Altman's office. Hanson 9/29/95 GJ at 15-16; Hanson 3/16/94 Fiske Int. at 5. Either during this conversation or a later one, Altman asked his secretary to retrieve a file, and after she brought it in, he took out an article about Madison Guaranty that had appeared in the New York Times during the campaign in 1992. Hanson 9/29/95 GJ at 15-16; Hanson 7/11/94 Treas. IG at 38; Hanson 7/14/94 Senate Banking Comm. Depo. at 128; see also Hanson 9/27/95 Int. at 4. Hanson did not remember Altman ever telling her that he had faxed this article to Nussbaum, or her discussing this article with anyone the White House. Hanson 9/29/95 GJ at 19; Hanson 9/29/95 GJ at 19-20.

[875] Sloan had no independent memory of the conversation other than his notes. See Sloan 4/7/94 Fiske GJ at 24-26; Sloan 7/13/94 Treas. IG at 16-29.

[876] See Sloan's handwritten notes (Sept. 30, 1993) (Doc. No. 011-DC-00001086) (emphasis added).

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thinks."[877]

Sloan's notes also appeared to show Hanson reporting she had a "piece of news" from Roelle.[878] The vice president of the Kansas City RTC office had received a call from reporter Schmidt claiming that unspecified vital information was suppressed.[879] Schmidt also had demanded the unlisted home telephone numbers for the RTC investigators on the nine criminal referrals.[880]

Sloan did not know if the notes reflected Hanson's reporting of Schmidt's inquiries or if they reflected Hanson's reporting additional factual information about the referrals' handling.[881] The notes reported that apparently the referrals would go or had gone from Kansas City to Washington and then from Washington to Little Rock on Friday.[882] The notes indicated that a criminal referral about Whitewater Development Company and the Clintons as principals had been pending since last September.[883] Sloan testified he thought this was the first time he had heard there might have been a prior criminal referral (C0004) involving the Clintons.[884] The notes also said the nine new criminal referrals had allegations about Governor Tucker and an attempt to divert funds.[885] Sloan's notes said the worst allegation was contained in one of the referrals that detailed a conspiracy to divert funds for campaign contributions involving

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[877] Id. (emphasis added).

[878] See id.

[879] See id.

[880] See id.

[881] See id. (Doc. Nos. 011-DC-00001087 through 89).

[882] See id. (Doc. No. 011-DC-00001086).

[883] See id.

[884] Sloan 4/7/94 Fiske GJ at 31-32.

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McDougal and the Clinton "1985" campaign, as co-conspirators.[886] The notes said the Clintons were mentioned in other charges as potential witnesses.[887]

6. Clifford Sloan Briefed Bernard Nussbaum and Bruce Lindsey.

Sloan told both Nussbaum and Lindsey about the September 30, 1993 telephone call with Hanson.[888] Nussbaum remembered only that Sloan told him about Hanson's correction that the material previously provided was the newspaper articles and not material about the referrals.[889] Lindsey remembered a meeting with Sloan and at least one other meeting with Sloan and Eggleston.[890] He said it was possible he had other updates from Sloan or Eggleston.[891]

7. Bruce Lindsey Briefed the President about the Referrals.

On October 4, 1993, while traveling with President Clinton, Lindsey spoke on the telephone with James Lyons, a lawyer who had produced a report on Whitewater for the Clinton Presidential Campaign.[892] Lindsey testified Lyons said he had received press inquiries about Madison Guaranty and the referrals.[893] Lindsey said the only knowledge Lyons had about the referrals was what the press told him.[894] Lindsey's notes about the conversation[895] indicated: "9

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[885] See Sloan's handwritten notes (Sept. 30, 1993) (Doc. No. 011-DC-00001086).

[886] See id. (Doc. No. 001-DC-00001087).

[887] Id.

[888] Sloan 4/7/94 Fiske GJ at 32-33.

[889] Nussbaum 6/13/95 GJ at 19.

[890] Lindsey 7/21/94 Senate Banking Comm. Depo. at 174.

[891] Id. at 66-67, 179-80.

[892] Lindsey 3/24/94 Fiske GJ at 12-14.

[893] Id. at 13.

[894] Id.

[895] See Lindsey's handwritten notes (undated) (Doc. No. 008-DC-00000078).

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criminal referrals," with no more detail.[896] Lyons did not remember Lindsey saying he already knew about the referrals.[897]

Lindsey testified that after his conversation with Lyons, he told President Clinton about the press calls to Lyons and that there were criminal referrals on Madison Guaranty that mentioned the Clinton campaign.[898] Lindsey said he briefed the President because he anticipated stories would soon appear in the press.[899] Lindsey testified that President Clinton thanked him for the information and did not ask Lindsey to do anything else about the referrals.[900]

President Clinton testified that he remembered Lindsey telling him in early October 1993 that the RTC was referring or had made a referral involving Madison Guaranty mentioning the Clinton campaign or President Clinton.[901] President Clinton said he acknowledged what Lindsey told him and did not ask him to do anything.[902] The President also learned the referrals alleged possible diversion of money at a fundraiser, but he did not remember talking about that issue in October 1993.[903] Mrs. Clinton testified she first heard about the criminal referrals from a newspaper story published in late October 1993.[904]

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[896] Lindsey 3/24/94 Fiske GJ at 13.

[897] Lyons 7/25/95 GJ at 68-69.

[898] Lindsey 3/24/94 Fiske GJ at 15-16; Lindsey 7/21/94 Senate Banking Comm. Depo. at 217-20.

[899] Lindsey 3/24/94 Fiske GJ at 15; Lindsey 7/21/94 Senate Banking Comm. Depo. at 218-19.

[900] Lindsey 3/24/94 Fiske GJ at 16; see also Lindsey 7/21/94 Senate Banking Comm. Depo. at 219-21.

[901] W. Clinton 6/12/94 Fiske Depo. at 46-47.

[902] Id. at 47.

[903] Id. at 51.

[904] H. Clinton 7/22/95 Depo. at 38-39.

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8. The President Met with Governor Tucker at the White House on October 6.

President Clinton met in the Oval Office with Arkansas Governor Jim Guy Tucker on October 6, 1993.[905] Governor Tucker was in Washington to meet with Arkansas representatives in Congress and to give the President a proposal for locating a government facility in Arkansas.[906] Tucker Testified that at no time did he and President Clinton talk about Madison Guaranty or any of the referrals.[907] This investigation found no direct evidence that the President told Governor Tucker that the latter was mentioned in the criminal referrals during their meeting.

9. William Roelle Told Roger Altman of Further Press Activity in Kansas City.

On October 6, 1993, Jean Lewis sent an e-mail to her RTC supervisors in which she reported Susan Schmidt had visited her home in Kansas City the night before.[908] Schmidt had asked Lewis detailed questions about a number of topics, including a transaction between Whitewater and International Paper, about Seth Ward's relationship with Webster Hubbell, the delay in official action on C-0004, and whether Vincent Foster was connected with "any of this."[909] Schmidt also asked for Lewis's unlisted home phone number.[910]

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[905] See Letter from Lloyd Cutler, then Counsel to the President to Henry Gonzalez, then Chairman, House Committee on Banking (July 27, 1994) (Doc. No. 226-DC-00000002 through 04) (attaching the President's briefing memo for his meeting with Tucker).

[906] Mason 7/6/95 Int. at 1-2 (Keith Mason was the Deputy Assistant to the President for Intergovernmental Affairs).

[907] Tucker 4/2/98 GJ at 114.

[908] See E-mail from Jean Lewis to Richard Iorio (Oct. 6, 1993) (Doc. No. 044-DC-00005664).

[909] See id.

[910] See id.

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Katsanos received a copy of Lewis's e-mail and discussed it with Roelle.[911] Katsanos asked if Altman had been briefed on the referrals.[912] Roelle said he had mentioned the subject to Altman twice -- once just after Altman became CEO of the RTC, and again more recently.[913] Roelle said he had briefed Hanson on the more recent set of referrals, and he assumed Hanson would tell Altman.[914]

On October 7, 1993, Roelle briefed Altman about Lewis's e-mail on Schmidt's activities in Kansas City.[915] Altman and Roelle told Hanson what Roelle had just reported.[916] Roelle testified Altman instructed Hanson to advise "Jack, Bernie, the Secretary" and a list of others whose names Roelle could not remember.[917] Hanson said she would.[918]

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[911] Katsanos 4/26/95 GJ at 35-37. Roelle remembered Katsanos showed him a copy of Lewis's October 6, 1993 e-mail. Roelle 2/24/95 Int. at 5.

[912] Katsanos 4/26/95 GJ at 38.

[913] Id.

[914] Id. at 41-42. Katsanos did not remember if Roelle told Altman the Clintons were involved. Id. at 38-39.

[915] Roelle 2/24/95 Int. at 5. Altman did not remember learning this information about Schmidt, nor did he remember a conversation with Roelle and Hanson where he asked Hanson to brief Secretary Bentsen and DeVore and Nussbaum. Altman 9/8/95 Int. at 4. He did say the conversation might have taken place. Id.

RTC employee Lamar Kelly remembered Roelle telling him that Schmidt's activities in Kansas City were discussed at a meeting Roelle attended with Altman. Kelly 6/25/96 Int. at 4-5. Kelly said Roelle mentioned Altman evidently had told others at the Treasury Department about the referrals. Id. Kelly did not remember Roelle referring to Nussbaum in this context. Id. at 4.

[916] Roelle 7/20/94 Senate Banking Comm. Depo. at 65-66; Roelle 2/24/95 Int. at 5.

[917] Roelle 7/20/94 Senate Banking Comm. Depo. at 66-67; see also Roelle 2/24/95 Int. at 5. Hanson remembered a phone call from Roelle mentioning Schmidt had visited one of the RTC's Kansas City investigators at home and was rebuffed in an attempt to talk about the referrals and the agency's investigation. Hanson 4/21/94 Fiske GJ at 20; Hanson 7/11/94 Treas. IG at 75. Hanson did not remember when this conversation occurred, but she did remember it took place after her other conversation with Roelle about Schmidt asking for unlisted telephone numbers of RTC investigators. Hanson 7/11/94 Treas. IG at 75; see also Hanson call sheet (Oct. 6, 1993) (Doc. No. 007-DC-00000374) (indicating a discussion with Roelle about Schmidt,

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10. Jean Hanson Called Clifford Sloan on October 7, 1993.

Hanson called Sloan again on October 7, 1993.[919] Sloan said Hanson reported Schmidt was in Kansas City and had unsuccessfully questioned an RTC investigator at home.[920] Sloan said that Schmidt had asked about Whitewater's relationship with International Paper, Seth Ward, a Rose Law Firm partner dispute involving Joe Giroir, and the role of Vincent Foster in any of those matters.[921] Sloan said he learned from Hanson that Schmidt had interviewed McDougal the day before.[922] Hanson then read Sloan relevant portions of the September 30, 1993 RTC Early Bird.[923]

Kansas City, and nine criminal referrals); see also Hanson call sheet (Oct. 7, 1993) (Doc. No. 007-DC-00000375) (indicating a conversation with Roelle about "criminal referrals"). Hanson did not remember briefing Altman about this, and she did not believe she discussed it with Secretary Bentsen, Jack DeVore, or Joshua Steiner. Hanson 4/21/94 Fiske GJ at 20.

Bentsen thought the first time he heard about the referrals on Madison Guaranty was in a newspaper account in the fall of 1993. Bentsen 7/12/95 Int. at 3. He did not know of any discussions with the White House about the criminal referrals or potential press leaks. Bentsen 7/26/96 Senate Banking Comm. Depo. at 15-16.

[918] Roelle 2/24/95 Int. at 5. Roelle testified he recognized "Jack" as Jack DeVore and "the Secretary" as Treasury Secretary Lloyd Bentsen. Id.; Roelle 7/20/94 Senate Banking Comm. Depo. at 67. Later that evening he realized "Bernie" might be White House Counsel Bernard Nussbaum. Roelle 2/24/95 Int. at 5. Roelle did not speak again about Madison Guaranty or the referrals with either Altman or Hanson after that conversation. Id. at 6.

[919] Sloan 4/7/94 Fiske GJ at 35. Sloan remembered Eggleston was also party to the conversation. Id. at 36-37.

[920] Id. at 37.

[921] Id. at 38-40.

[922] Id. at 40-41.

[923] Id. at 42.

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11. Sloan Briefed Nussbaum about the October 7 Hanson Telephone Call.

Sloan thought he briefed Nussbaum on the October 7 telephone call with Hanson.[924] Sloan also wrote a memorandum to Lindsey, dated October 7, 1993, which said: "With regard to the subject that Neil Eggleston and I spoke to you about one night last week, we have some additional information that we'd like to give you in a brief update."[925] Sloan briefed Lindsey about the October 7 Hanson call and passed on the information he had received from Hanson.[926] Lindsey told Sloan that in 1986 International Paper sold a parcel of realty to Whitewater that was then transferred to the Great Southern Land Corporation.[927] Sloan added what Lindsey had told him to his notes, also referring to the September 30, 1993 RTC Early Bird information.[928]

Sloan also remembered that at one of the Lindsey briefings (the one attended by Eggleston), Lindsey asked if it was proper for the White House to get information about the referrals; Sloan and Eggleston answered they thought it was appropriate.[929] Lindsey also remembered a briefing with Sloan and Eggleston where he received an update about press inquiries about the referrals.[930]

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[924] Id. at 43.

[925] Id. at 43-44; Memo from Cliff Sloan, Associate White House Counsel, to Bruce Lindsey, Adviser to President Clinton (Oct. 7, 1993) (Doc. No. 011-DC-00001008).

[926] Sloan 4/7/94 Fiske GJ at 43-45. Sloan could not positively remember whether Eggleston was present for the briefing, but he thought Eggleston attended at least one of the Lindsey briefings. Id. at 45.

[927] See id. at 46-47; Sloan 7/21/94 Senate Banking Comm. Depo. at 59-60; see also Memo from Cliff Sloan, Associate White House Counsel, to Bruce Lindsey, Adviser to President Clinton (Oct. 7, 1993) (Doc. No. 011-DC-00001008).

[928] Sloan 4/7/94 Fiske GJ at 48.

[929] Sloan 4/7/94 Fiske GJ at 48.

[930] Lindsey 7/21/94 Senate Banking Comm. Depo. at 53, 58-61. Lindsey's testimony is generally consistent with Sloan's. Id. at 54, 58-61; Lindsey 3/24/94 GJ at 19-21. He had the

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12. Jeff Gerth Contacted Jack DeVore about the Referrals.

DeVore testified that on October 11, 1993, New York Times reporter Gerth called with questions about Madison Guaranty and the referrals.[931] DeVore said Gerth knew the RTC's Kansas City office was investigating Madison Guaranty; part of Gerth's inquiry focused on contributions made at a 1985 fundraiser for the Clinton campaign.[932] Gerth said President Clinton was not a target, although Governor Tucker and a Clinton gubernatorial campaign might be.[933] One of the referrals involved four cashier's checks, each for $3,000 drawn on Madison Guaranty accounts, two of which were payable to Bill Clinton, and two payable to the Clinton for Governor campaign.[934] Gerth said the checks were dated April 4 or 5, 1985 and were all deposited in the Bank of Cherry Valley.[935]

Gerth asked who had contributed the checks and about their endorsements.[936] Gerth also told DeVore that other journalists were pursuing the story.[937] Gerth discussed the referrals' handling, telling DeVore that they had been sent to the RTC's headquarters in Washington, contrary to what Gerth thought was the normal procedure of sending them to the U.S. Attorney

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impression that Sloan and Eggleston were getting information from the Treasury Department. Lindsey 3/24/94 Fiske GJ at 22. They discussed conflicts of interest and the referrals' allegations about Governor Tucker, a diversion of funds involving the 1985 Clinton Committee and McDougal. Id. at 25-26; Lindsey 7/21/94 Senate Banking Comm. Depo. at 60-61; Lindsey's handwritten notes (undated) (Doc. No. 008-DC-00000074).

[931] DeVore 4/14/94 Fiske GJ at 6-8.

[932] Id. at 8; DeVore 7/20/94 Senate Banking Comm. Depo. at 43.

[933] DeVore 4/14/94 Fiske GJ at 8; DeVore 7/20/94 Senate Banking Comm. Depo. at 43-44,75, 129-30, 132.

[934] DeVore 4/14/94 Fiske GJ at 37-38.

[935] Id. at 37.

[936] DeVore 7/20/94 Senate Banking Comm. Depo. at 45, 47, 85.

[937] DeVore 4/14/94 Fiske GJ at 14; DeVore 7/20/94 Senate Banking Comm. Depo. at 51.

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for the Eastern District of Arkansas.[938] Gerth asked for any information DeVore could provide.[939]

DeVore told Gerth that he would see if he could come up with something.[940] DeVore decided to try and get Gerth some information and tell the White House about the call so officials there would be aware that the press was asking questions about Madison Guaranty and the referrals.[941] DeVore did not remember whom he might have told at the Department of Treasury about Gerth's call.[942]

13. Jack DeVore Looked into the Referrals.

RTC's press spokesman Katsanos testified DeVore called him twice in early to mid-October 1993 seeking information about the referrals' handling.[943] Katsanos told DeVore that referrals normally were not sent to Washington first but rather from the relevant RTC regional office to the U. S. Attorney's office.[944] He also told DeVore about a dispute within the RTC's Kansas City office over the Madison Guaranty referrals: the investigators working on them felt they were ready to be sent to the U.S. Attorney for the Eastern District of Arkansas, but the Professional Liability Section in Kansas City thought the referrals were weak.[945] Katsanos told DeVore that the referrals had been sent to the U.S. Attorney in Little Rock on October 8, 1993

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[938] DeVore 4/14/94 Fiske GJ at 8; Devore 7/20/94 Senate Banking Comm. Depo. at 44.

[939] DeVore 4/14/94 Fiske GJ at 9.

[940] Id.

[941] Id. at 14-16; DeVore 7/20/94 Senate Banking Comm. Depo. at 123-24.

[942] DeVore 4/14/94 Fiske GJ at 18.

[943] Katsanos 7/12/94 Senate Banking Comm. Depo. at 79-80; Katsanos 4/26/95 GJ at 55-57.

[944] Katsanos 7/12/94 Senate Banking Comm. Depo. at 80-81; Katsanos 4/26/95 GJ at 56.

[945] Katsanos 7/6/94 RTC Int. at 27-28.

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(before Gerth's call to DeVore).[946] Katsanos testified DeVore told him that he (DeVore) was going to brief the White House Communications Director, Mark Gearan, about the referrals.[947] DeVore denied speaking with Katsanos about the procedures for handling referrals.[948]

14. On October 14, 1993, Treasury Officials Met with White House Officials to Discuss the Referrals.

On the afternoon of October 14, 1993, a meeting took place in Nussbaum's office at the White House.[949] The White House officials who attended were Nussbaum, Sloan, Eggleston, Lindsey, and Gearan.[950] Present from the Department of Treasury were Hanson, DeVore, and Josh Steiner, Treasury Department Chief of Staff.[951] Recollections among the participants about what was discussed varied. Each witness's memory is summarized below.

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[946] Katsanos 7/6/94 Treas. IG at 52; Katsanos 4/26/95 GJ at 61.

[947] Katsanos 7/12/94 Senate Banking Comm. Depo. at 83.

[948] DeVore 4/14/94 Fiske GJ at 36; DeVore 7/20/94 Senate Banking Comm. Depo. at 55. Hanson remembered being asked by Altman to attend a meeting in his office with DeVore (and possibly others) about the inquiries DeVore was receiving. Hanson 4/21/94 Fiske GJ at 39. Hanson said DeVore suggested at this meeting that in responding to the press inquiries, it might be helpful if someone read the criminal referrals. Hanson 4/21/94 Fiske GJ at 39. Hanson remembers telling Altman it would be unusual for a CEO to read the referrals, and then a suggestion was made that Hanson should perhaps read them. Hanson 4/21/94 Fiske GJ at 39-40. Hanson testified that in a later conversation (still before the October 14 meeting) with Roelle, she raised this possibility with him. Hanson 4/21/94 Fiske GJ at 40. According to Hanson, Roelle told her, "Jean, you don't want to do that"; she thought his advice may have been based on the fact that she was not an RTC employee. Hanson 4/21/94 Fiske GJ at 40. Hanson testified she agreed with Roelle not to read the referrals. Id.

[949] Sloan 4/7/94 Fiske GJ at 51; see also Eggleston 3/31/94 GJ at 25.

[950] Sloan 4/7/94 Fiske GJ at 51; Eggleston 3/31/94 Fiske GJ at 26; Nussbaum 3/17/94 Fiske GJ at 35-36; Gearan 3/10/94 Fiske GJ at 28-29; Lindsey 4/24/94 Fiske GJ at 45-46.

[951] Hanson 4/21/94 Fiske GJ at 25; Sloan 4/7/94 Fiske GJ at 151; Eggleston 3/31/94 Fiske GJ at 26; DeVore 4/14/94 Fiske GJ at 23-24.

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a. Clifford Sloan.

Sloan testified DeVore said he had received questions from Gerth.[952] Gerth thought the referrals were being treated differently from others in that they were sent to the RTC's headquarters in Washington, D.C. rather than to the U.S. Attorney's office for the Eastern District of Arkansas.[953] DeVore thought Gerth ought to be corrected.[954] Nussbaum asked if the RTC normally would explain its procedures for dealing with referrals.[955] Nussbaum also reported he had heard about the referrals from Hanson, which she acknowledged.[956] Steiner said only public information was being discussed at the meeting, in response to public inquiries.[957] During the meeting, Lindsey raised what was in the RTC's Early Bird.[958] Nussbaum said if anything further came up on this subject, he and Eggleston would work on it.[959]

b. Bernard Nussbaum.

Nussbaum remembered DeVore and Lindsey did most of the talking.[960] DeVore said Gerth was working on a Whitewater/Madison Guaranty story and asked about the referrals and the endorsements of four checks involved in one of the referrals.[961] Gerth also asked if there was

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[952] Sloan 4/7/94 Fiske GJ at 52.

[953] Id.

[954] Id.

[955] Id. at 52-53.

[956] Id. at 53.

[957] Id.

[958] Id.

[959] Id. at 54-55.

[960] Nussbaum 3/17/94 Fiske GJ at 39.

[961] Id.

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some attempt to affect the referrals.[962] DeVore wanted to tell Gerth that the referrals had already gone to Little Rock so Gerth would not conclude that his call had influenced the referral process.[963] DeVore said confirming the existence of a referral was not unusual.[964] Lindsey (or someone else) questioned the propriety of the step, but the issue was not resolved.[965] Steiner said the meeting's participants were discussing press inquiries and the Department of Treasury's response (so the White House would be on notice) -- not the referrals' substance.[966]

c. Neil Eggleston.

Devore began the meeting by explaining that Gerth and Schmidt had called him about a criminal referral.[967] He mentioned Schmidt went to the home of an RTC investigator in Kansas City.[968] DeVore said Gerth's call led him to call the meeting: Gerth had copies of the front of four Madison Guaranty checks that were put in a Clinton gubernatorial campaign account (which were mentioned in a referral), and he wanted copies of the backs of the checks.[969] DeVore said Gerth or Schmidt said the referrals were not being routed according to normal procedure.[970] Eggleston learned at this meeting that the "routing" allegations were untrue and that the referrals

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[962] Id. at 40.

[963] Id. at 40-41; Nussbaum 6/13/95 GJ at 37.

[964] Nussbaum 3/17/94 Fiske GJ at 41.

[965] Id. at 41-42.

[966] Id. at 43-44.

[967] Eggleston 3/31/94 Fiske GJ at 27-28.

[968] Id. at 28; Eggleston 5/17/95 GJ at 18-19.

[969] Eggleston 3/31/94 Fiske GJ at 28; Eggleston 7/19/94 Senate Banking Comm. Depo. at 33-34.

[970] Eggleston 7/19/94 Senate Banking Comm. Depo. at 34-35.

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had in fact gone to Little Rock before Gerth's inquiry.[971] The issue whether the Department of Treasury should confirm the referrals' routing to Little Rock was raised.[972] Lindsey may have mentioned that he, too, had received calls from Schmidt and/or Gerth, and the substance of those calls was described at the meeting.[973] Steiner said the information discussed at the meeting came from the press.[974] Eggleston testified he understood that to mean that the meeting was about the press and not the referrals' substance; he remembered thinking that was not totally accurate because certain non-public information -- for example, the existence of criminal referrals -- was discussed with White House staff at the meeting.[975]

d. Bruce Lindsey.

Lindsey took notes.[976] DeVore led the meeting; he wanted to discuss several inquiries that he had received.[977] Lindsey's notes reflect information DeVore passed on from the press's inquiries.[978] An Associated Press reporter asked about checks deposited at the Bank of Cherry Valley, an institution owned by one of President Clinton's friends.[979] The 1984 Clinton

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[971] Eggleston 5/17/95 GJ at 31-32; Eggleston 7/19/94 Senate Banking Comm. Depo. at 34-35.

[972] Eggleston 7/19/94 Senate Banking Comm. Depo. at 35-37.

[973] Eggleston 3/31/94 Fiske GJ at 36-37.

[974] Id. at 29-30.

[975] Id. at 30-31.

[976] See Lindsey's handwritten notes (undated) (Doc. No. 008-DC-00000079).

[977] Lindsey 3/24/94 Fiske GJ at 47-48; Lindsey 7/14/94 Treas. IG. at 8.

[978] See Lindsey's handwritten notes (undated) (Doc. No. 008-DC-00000079).

[979] Lindsey 3/24/94 Fiske GJ at 48; see also Lindsey's handwritten notes (undated) (Doc. No. 008-DC-00000079).

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gubernatorial campaign had an account there -- and Whitewater at one time had a loan from it.[980] Lindsey's notes record: "US Atty --> LR --> other cashier's checks --> Jim McDougal/Susan McDougal $300,000."[981] Lindsey did not know what the "US Atty LR" reference meant.[982] He assumed the "cashier's checks" entry reflected the press's belief that four checks were given at an April 1985 fundraiser.[983] The rest of the note had to do with the $300,000 loan from Capital Management Services ("CMS") to the McDougals.[984] Lindsey's notes reflect a statement that Tucker may be indicted.[985] Lindsey said the press was telling this to DeVore.[986] DeVore then described the press's pursuit of RTC investigators in Kansas City; the press's claim that the referrals were not being routed normally; and Schmidt's questions about the Rose Law Firm's involvement in Madison Guaranty in 1985.[987]

DeVore then discussed Gerth's inquiry. Gerth had asked about four $3,000 checks -- two were payable to Clinton and the others to the campaign; they were dated in April 1985.[988] Gerth said the purpose of the checks was to retire the campaign debt.[989] Gerth wanted to know who

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[980] Lindsey 3/24/94 Fiske GJ at 48; see also Lindsey's handwritten notes (undated) (Doc. No. 008-DC-00000079).

[981] Lindsey's handwritten notes (undated) (Doc. No. 008-DC-00000079).

[982] Lindsey 3/24/94 Fiske GJ at 48; Lindsey's handwritten notes (undated) (Doc. No. 008-DC-00000079).

[983] Lindsey 3/24/94 Fiske GJ at 48-49; Lindsey's handwritten notes (undated) (Doc. No. 008-DC-00000079).

[984] Lindsey 3/24/94 Fiske GJ at 49; Lindsey's handwritten notes (undated) (Doc. No. 008-DC-00000079).

[985] Lindsey's handwritten notes (undated) (Doc. No. 008-DC-00000079).

[986] Lindsey 3/24/94 Fiske GJ at 49.

[987] Id. at 49-51.

[988] Id. at 51.

[989] Id.

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had endorsed the checks.[990] Gerth alleged the checks were funded with money from a Madison Guaranty loan.[991]

DeVore wanted to know how to respond to the press and thought the Department of Treasury would confirm the existence of the referrals.[992] That surprised Lindsey, who advised DeVore not to comment.[993] DeVore said he would follow Treasury Department procedure, though he thought it important to correct any impression Gerth had that his call prompted action on the referrals.[994] Lindsey told DeVore to tell Gerth "off the record" that whatever was sent to Washington, D.C. had gone to Little Rock before Gerth's call.[995] Lindsey said DeVore told the group that the referrals had already gone to Little Rock; he even mentioned that he confirmed that fact with the RTC.[996]

e. Mark Gearan.

Deputy Chief of Staff Mark Gearan was late to the meeting; he remembered DeVore, Lindsey, and Nussbaum did most of the talking.[997] He took notes.[998] The notes indicated the RTC's regional office had sent nine criminal referrals to Washington, D.C., which were routed

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[990] Id.

[991] Id. at 51-52.

[992] Id. at 52.

[993] Id. at 53-55; see also Lindsey 7/21/94 Senate Banking Comm. Depo. at 76.

[994] Id.

[995] Id. at 55.

[996] Lindsey 7/21/94 Senate Banking Comm. Depo. at 75.

[997] Gearan 7/23/94 Senate Banking Comm. Depo. at 18, 23; Gearan 3/10/94 Fiske GJ at 24, 33.

[998] See Gearan's handwritten notes (undated) (Doc. Nos. 004-DC-00000016 through 17).

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the previous Friday to Little Rock.[999] Gearan did not remember whether anyone at the meeting provided this information or simply passed on information that came from the press.[1000]

Gearan remembered discussing the RTC Early Bird.[1001] There also was mention of Gerth's questions about the cashier's checks described in the referrals, dated April 1985, and each for $3,000.[1002] Two of them were made out to Clinton personally, and the others to the Clinton campaign.[1003] The checks were deposited in the Cherry Valley Bank, owned by a Clinton friend and his former chief of staff while he was governor, and Gerth wanted to know about the checks' endorsements.[1004] Gerth also said Tucker may be indicted, Hubbell was named somehow, and Clinton was not a target.[1005]

f. Jean Hanson.

Hanson testified DeVore led the meeting and discussed the questions he had received from the press.[1006] Hanson did not remember exactly what the questions were, but she did remember Gerth questioning how the referrals were routed.[1007] She remembered telling the group that the Clintons were named only as potential witnesses and that one referral alleged a

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[999] See id.

[1000] Gearan 3/10/94 Fiske GJ at 33-34.

[1001] Gearan 7/23/94 Senate Banking Comm. Depo. at 23; Gearan 3/10/94 Fiske GJ at 37-38.

[1002] Gearan 3/10/94 Fiske GJ at 38, 40.

[1003] Id. at 40; see also Gearan's handwritten notes (undated) (Doc. No. 004-DC-00000016).

[1004] Gearan 7/23/94 Senate Banking Comm. Depo. at 21; Gearan 3/10/94 Fiske GJ at 40, 43; see also Gearan's handwritten notes (undated) (Doc. Nos.004-DC-00000016 through 17).

[1005] Gearan 7/23/94 Senate Banking Comm. Depo. at 21-22; Gearan 3/10/94 Fiske GJ at 43; see also Gearan's handwritten notes (undated) (Doc. No. 004-DC-00000017).

[1006] Hanson 4/21/94 GJ at 26; Hanson 9/29/95 GJ at 48; Hanson 7/11/94 Treas. IG at 105.

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possible conspiracy between McDougal and the "1985" Clinton campaign.[1008] She remembered Lindsey had some material with him, and he discussed articles that had appeared in the papers.[1009] Hanson remembered Lindsey commenting that at least one of the articles was wrong.[1010] DeVore said during the meeting that he planned to tell Gerth that the referrals had already been sent to Little Rock; Nussbaum asked if that information could be released.[1011] DeVore said he thought it was Treasury Department policy to confirm criminal referrals, which Hanson planned to check after the meeting.[1012]

g. Jack DeVore.

DeVore said he told the participants about his discussion with Gerth.[1013] He said Schmidt and an AP reporter were pursuing Madison Guaranty and referral-related stories.[1014] He remembered Lindsey mentioning the New York Times's Arkansas investigation, and that Lindsey read from an Arkansas newspaper article about Madison Guaranty/Whitewater.[1015] DeVore said

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[1007] Hanson 4/21/94 Fiske GJ at 26; Hanson 7/11/94 Treas. IG at 78.

[1008] Hanson 4/21/94 Fiske GJ at 26-27; Hanson 9/29/95 GJ at 49; Hanson 7/11/94 Treas. IG at 107.

[1009] Hanson 7/11/94 Treas. IG at 84-85.

[1010] Hanson 4/21/94 Fiske GJ at 27-28.

[1011] Hanson 4/21/94 Fiske GJ at 28-29; Hanson 9/29/95 GJ at 48; Hanson 7/11/94 Treas. IG at 85.

[1012] Hanson 4/21/94 Fiske GJ at 28-31; Hanson 9/29/95 GJ at 53; Hanson 7/11/94 Treas. IG at 85-86. Hanson's search for the answer was rendered academic when DeVore confirmed the making of the referrals to Gerth. Hanson 4/21/94 Fiske GJ at 32.

[1013] DeVore 4/14/94 Fiske GJ at 29, 32; DeVore 7/20/94 Senate Banking Comm. Depo. at 66.

[1014] DeVore 4/14/94 Fiske GJ at 29-30; DeVore 7/20/94 Senate Banking Comm. Depo. at 67-68.

[1015] DeVore 4/14/94 Fiske GJ at 29-30; DeVore 7/10/92 Senate Banking Comm. Depo. at 66-67, 71-72.

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he learned the referrals already had been sent to the Justice Department but did not remember who mentioned that fact.[1016] DeVore decided he would tell Gerth the referrals were made before Gerth's call, which DeVore told the meeting participants.[1017] Nussbaum questioned whether DeVore should do that, but DeVore said the story Gerth already seemed to have was inaccurate.[1018]

h. Joshua Steiner.

Steiner testified DeVore discussed the inquiries from Gerth and his planned response.[1019] Gerth had asked two questions: one about the cashier's checks given to a Clinton gubernatorial campaign; the other about the alleged stalling of the referrals.[1020] Steiner thought that Lindsey told the group the referrals had already been made.[1021] DeVore said he planned to tell Gerth that.[1022] Steiner remembered there was talk about the cashier's checks, but did not remember the details.[1023]

Hanson, Steiner, and DeVore -- the Department of Treasury representatives at the meeting -- each testified that to their knowledge Altman did not know about the October 14

[1016] DeVore 4/14/94 Fiske GJ at 30-31; DeVore 7/20/94 Senate Banking Comm. Depo. at 68-70.

[1017] DeVore 4/14/94 Fiske GJ at 31; DeVore 7/20/94 Senate Banking Comm. Depo. at 68-70.

[1018] Devore 4/14/94 Fiske GJ at 31.

[1019] Steiner 3/31/94 Fiske GJ at 14; Steiner 8/25/95 GJ at 20.

[1020] Steiner 8/25/95 GJ at 15-16, 21.

[1021] Steiner 8/24/95 Int. at 4; Steiner 8/25/95 GJ at 221. Although DeVore denied having provided this information at the meeting, in light of Katsanos's testimony, see Katsanos 4/26/95 GJ at 54-62; Katsanos 6/2/94 Fiske Int. at 4, as well as the other recollections addressed in the text, it is probable that DeVore disclosed the referrals had already been sent, rather than Lindsey.

[1022] Steiner 8/25/95 GJ at 20.

[1023] Id.

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meeting.[1024]

15. Jean Hanson Allegedly Received a Copy of the Professional Liability Section ("PLS") Referral Analysis.

On October 4, 1993, E. Glion Curtis was Assistant General Counsel for the RTC, and later became its Acting General Counsel.[1025] Curtis met regularly with Hanson and with John Bowman, Assistant General Counsel.[1026] On Friday, October 8, 1993, Curtis received an e-mail from the RTC's Kansas City PLS group analyzing the referrals.[1027] Curtis knew the referrals

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[1024] Hanson 9/29/95 GJ at 54; Steiner 8/25/95 GJ at 29-31; Devore 4/14/94 Fiske GJ at 21-22. This Office sought to determine Secretary Bentsen's knowledge of the fall contacts. Hanson's September 30, 1993 memo suggested she may have discussed with him at least the press inquiries about the referrals (if not the White House contacts themselves). Memo from Jean Hanson, General Counsel for Treasury Department to Roger C. Altman, Deputy Secretary of the Department of Treasury (Sept. 30, 1993) (Doc. No. 007-DC-00000154). Roelle also said on another occasion, he heard Altman order Hanson to brief the Secretary about Schmidt's activities in Kansas City. Roelle 2/24/95 Int. at 5. No additional evidence was found that either of these briefings took place. Steiner said on October 15 (possibly October 14), he mentioned to Secretary Bentsen that Treasury had received a press inquiry about Madison Guaranty, and they thought there might be a story. Steiner 8/25/95 GJ at 29. Steiner did not think he mentioned the October 14 meeting to Secretary Bentsen. Steiner 7/19/94 Senate Banking Comm. Depo. at 289. Steiner told the Secretary that he received a press inquiry about Madison Guaranty. Steiner 7/19/94 Senate Banking Comm. Depo. at 290. Bentsen asked where Madison Guaranty was located, and Steiner said he did not know, that he was confused whether it was in Kansas City or Arkansas. Steiner 8/25/95 GJ at 29. Steiner said he would check. Id. He later checked and found out Madison Guaranty was in Arkansas. Steiner 7/19/94 Senate Banking Comm. Depo. at 290; Steiner 8/24/95 Int. at 11.

Secretary Bentsen claimed not to remember Altman, Hanson, or anyone else speaking to him about the referrals in September or October 1993. Bentsen 7/26/94 Senate Banking Comm. Depo. at 12; Bentsen 7/12/95 Int. at 3-4. He thought the first he heard of them was in reading press reports. Bentsen 7/12/95 Int. at 3. He did not believe he learned about any of the fall contacts with the White House until they surfaced in the press in connection with the February 24, 1994 Senate Banking Committee hearings and the resulting controversy. Id. at 4.

[1025] Curtis 5/2/95 GJ at 6; Curtis 11/22/94 Fiske Int. at 3.

[1026] Curtis 5/2/95 GJ at 31; Curtis 11/22/94 Fiske Int. at 6-7.

[1027] Curtis 5/2/95 GJ at 35; Curtis 11/22/94 Fiske Int. at 5; see E-mail from Julie F. Yanda to James R. Dudine; Thomas L. Hindes; E. Glion Curtis; Dennis M. Cavinaw; James G.

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were sensitive.[1028]

Curtis knew from speaking with Roelle that Roelle had briefed, or would brief, Altman on the referrals.[1029] Curtis thought Altman should know about PLS's analysis but wanted a final signed memorandum before Altman was told.[1030] He received a final version around October 14, 1993.[1031] He thought that the same day he met with Hanson and Bowman to inform them, so that Hanson would have the details necessary to brief Altman.[1032] Curtis remembered folding the PLS memorandum and slipping it inside his jacket pocket before walking over to the meeting.[1033]

Curtis testified that at the meeting the memorandum was an important discussion topic -- Bowman made copies for Hanson and himself.[1034] The three went through the analysis, discussed that the Clintons were named, and that PLS had raised concens about the statute of limitations and double jeopardy.[1035] Hanson questioned the mechanics of the referral process, and Curtis responded.[1036] Curtis thought he told Hanson that referrals were first sent to the RTC's Washington, D.C. headquarters for prior approval before being sent to the Justice

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Thompson; L. Richard Iorio; David M. Swiss; Russell F. Kaufman; Lee O. Ausen; L. Jean Lewis; and Carl F. Gamble (Oct. 8, 1992) (Doc. No. 224-DC-00000063).

[1028] Curtis 5/2/95 GJ at 36; Curtis 11/22/94 Fiske Int. at 8; Curtis 7/8/94 Treas. IG at 17-18.

[1029] Curtis 5/2/95 GJ at 25; Curtis 7/8/94 Treas. IG at 31; Curtis 6/7/95 House Banking Comm. Depo. at 45.

[1030] Curtis 5/2/95 GJ at 35-36.

[1031] Curtis 5/2/95 GJ at 36; Curtis 11/22/94 Fiske Int. at 7.

[1032] Curtis 5/2/95 GJ at 38, 41; Curtis 11/22/94 Fiske Int. at 7.

[1033] Curtis 11/22/94 Fiske Int. at 8.

[1034] Curtis 5/2/95 GJ at 40; Curtis 11/22/94 Fiske Int. at 8.

[1035] Curtis 11/22/94 Fiske Int. at 8.

[1036] Curtis 5/2/95 GJ at 40; Curtis 11/22/94 Fiske Int. at 8.

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Department.[1037] The latter statement was wrong; Curtis later learned referrals typically went from the RTC's field offices to the respective United States Attorney's offices, with headquarters receiving copies in high profile cases.[1038] Curtis remembered contacting Hanson to correct the information he gave her.[1039]

[1037] Curtis 5/2/95 GJ at 40-43; Curtis 11/22/94 Fiske Int. at 8.

[1038] Curtis 5/2/95 GJ at 49; Curtis 11/22/94 Fiske Int. at 8.

[1039] Curtis 5/2/95 GJ at 43, 49; Curtis 11/22/94 Fiske Int. at 8. Hanson did not remember discussing the referrals with Curtis and Bowman. Hanson 9/29/95 GJ at 55-57. In particular, she did not remember meeting with them the afternoon of October 14, 1993, although the meeting is reflected in her own handwriting on her schedule for that day. Hanson 9/29/95 GJ at 59-60; Hanson 9/27/95 Int. at 12; see Hanson calendar (Oct. 14, 1993) (Doc. No. 007-DC-00000140). Hanson testified the meeting being written in by hand on her schedule could indicate the meeting was not regularly scheduled. Hanson 9/29/95 GJ at 60. Hanson did not remember ever learning about the disagreement over the referrals between Kansas City's legal and investigative staff. Hanson 9/29/95 GJ at 61. She denied Curtis gave her a copy of the PLS analysis or that she had seen it before the disclosure of it to her during this investigation. Hanson 9/29/95 GJ at 61-62. Hanson did remember hearing that Katsanos had told DeVore that referrals normally went from the field to the Justice Department, and it was not normal for referrals to be sent to Washington. Id. at 56. She then called Curtis to check on that; Curtis told her that it was not unusual for a referral involving a high-profile individual to be routed to Washington. Hanson 4/21/94 Fiske GJ at 37. Hanson passed that information on to DeVore, and asked Curtis to speak with and correct Katsanos. Hanson 4/21/94 Fiske GJ at 37. Hanson thought she spoke with Curtis about this on October 15, 1993. Id. at 37. Curtis did not remember Hanson asking him to correct Katsanos. Curtis 5/2/95 GJ at 49-50.

Bowman corroborated Hanson's testimony. The two of them, along with Curtis, met frequently, but Bowman did not remember the October 14 meeting. Bowman 11/9/9 Fiske 4 Int. at 5. He did not remember ever seeing the PLS memo, which he said he would have remembered. Bowman 6/7/95 GJ at 26; Bowman 11/9/94 Fiske Int. at 5-6. He did not remember Hanson getting a copy of the memorandum. Bowman 11/9/94 Fiske Int. at 6. Finally, he did not remember ever being present for a discussion with Hanson or Curtis about any RTC internal disagreement about the referrals. Bowman 6/7/95 GJ at 21.

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16. The Press Publicly Reported on the Referrals.

The Washington Post first published the story about the referrals on October 31, 1993.[1040] Schmidt's article said: 1) the RTC had sent about ten criminal referrals pertaining to Madison to the U.S. Attorney for the Eastern District of Arkansas; 2) the referrals raised issues about Madison Guaranty checks deposited into Clinton gubernatorial campaign accounts, including if they were paid by diverting Madison Guaranty loan proceeds earmarked for other purposes; 3) RTC investigators were attempting to find out who endorsed and deposited checks payable to Clinton or the gubernatorial campaign; 4) Governor Tucker was under investigation about his business with Madison Guaranty; and 5) there was an internal debate at the RTC about including the transactions involving the Clintons in the referrals.[1041] A number of press stories about the referrals or other aspects of Madison Guaranty/Whitewater followed this story.[1042]

17. White House Lawyers Met with President Clinton's Personal Lawyers on November 5, 1993.

On November 5, 1993, a meeting was held at Williams & Connolly to transfer the Clintons' private legal representation to David Kendall, and to divide future representation between private and official counsel.[1043] Kendall, Steve Engstrom,[1044] Lyons, and -- from the

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[1040] Susan Schmidt, U.S. Is Asked to Probe Failed Arkansas S&L, Wash. Post, Oct. 31, 1993, at A1.

[1041] Id.

[1042] See, e.g., Paul Barrett, U.S. Investigating S&L Chief's '85 Check to Clinton, SBA-Backed Loan to Friend, Wall St. J., Nov. 1, 1993, at A3; Michael Isikoff & Howard Schneider, Clinton's Former Real Estate Firm Probed, Wash. Post, Nov. 2, 1993, at A1; Jeff Gerth & Stephen Engelberg, U.S. Investigating Clinton's Links to Arkansas S&L, N.Y. Times, Nov. 2, 1993, at A1; Richard Keil, White House Seeks to Dissociate Clinton from Probes, A.P., Nov. 2, 1993.

[1043] Hearings Relating to the Investigation of Whitewater Dev. Corp. and Related Matters Before the Senate Special Comm. to Investigate Whitewater Dev. Corp. and Related Matters of

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White House -- Nussbaum, Lindsey, Eggleston, and Kennedy attended.[1045] The OIC obtained the notes Lindsey and Kennedy took at the meeting, as well as a diagram Lyons constructed illustrating various Arkansas relationships involving Whitewater, Madison Guaranty, and the Clintons.[1046]

Kennedy wrote a note, which read: "Try to find out what's going on in Investigation."[1047] Both Kennedy and Lindsey testified this note simply reflected a step Kendall planned to take as private counsel to the Clintons.[1048] They said it did not indicate a White House plan to obtain information from the Department of Treasury or the RTC.[1049]

Kennedy's notes also mentioned an RTC referral "w/r/t McDougal;" and that the referral discussed four campaign checks from April 1985 involving Clinton personally and the campaign

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the Senate Comm. on Banking, Housing, and Urban Affairs, 104th Cong. 108-09 (Jan. 16, 1996) (testimony of W. Eggleston) [hereinafter "Senate Whitewater Comm. Hearing"].

[1044] Engstrom was a Little Rock attorney who was going to work as the Clintons' counsel in Arkansas. Kennedy 2/3/98 GJ at 73, 76, 80.

[1045] Senate Whitewater Comm. Hearing, supra note 1043, at 117, 306 (Jan. 16, 1996) (testimony of W. Kennedy) (discussing Exhibit 535).

[1046] The notes were obtained only after a lengthy legal battle necessitated by the White House's and the Clintons' assertion of executive privilege, attorney-client privilege and work product protection. See Kennedy's handwritten notes (undated) (Doc. No. 396-DC-00000001) ; Typewritten version of Kennedy notes (undated) (Doc. No. 396-DC-00000014); Lindsey's handwritten notes (395-DC-00000004); see Handwritten diagram showing relationship among Whitewater/Madison Guaranty/CMS/Rose Law Firm/Clintons (Nov. 5, 1993) (Doc. No. 311-DC-00000019); Kennedy copy with handwritten notes (undated) (Doc. No. 396-DC-00000013) .

[1047] Kennedy's handwritten notes (Nov. 5, 1993) (Doc. No. 396-DC-00000001).

[1048] Senate Whitewater Comm. Hearing, supra note 1043, at 290 (Jan. 16, 1996) (testimony of W. Kennedy); Lindsey 1/10/96 Senate Depo. at 45-46.

[1049] See generally Lindsey 1/10/96 Senate Depo. at 45-51.

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committee.[1050] Kennedy's notes recorded that three checks were written on Madison Guaranty accounts for $3,000 each and that the fourth check was from McDougal's personal account signed by Susan McDougal.[1051] The notes addressed a Madison Guaranty loan, the proceeds of which apparently were used for the four $3,000 checks to the Clinton campaign at the April 1985 fundraiser.[1052] The notes indicated that Tucker "could be" a target of the RTC referrals.[1053] Kennedy testified Lindsey provided this information about the referrals, and all of the information provided came from press inquiries and reports, except for some information about the checks, which Lindsey had obtained on his own.[1054]

The Kennedy notes contained an entry reading:

> Vacuum Rose Law Files WWDC Docs – subpoena
> *Documents ---> Never know go out
> Quality[1055]

Kennedy testified that this entry referred to the "information vacuum" that surrounded discussion of the issues because the Rose Law Firm, Whitewater, and other records no longer existed.[1056] He also maintained the last word in the entry was "quality" -- meaning, what information was available was of poor quality.[1057] He said there was no discussion of attempting to destroy or

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[1050] Kennedy's handwritten notes (undated; Dec. 22, 1995) (Doc. No. 396-DC-00000002 and 7).

[1051] Id.

[1052] See Kennedy's handwritten note (Dec. 22, 1995) (Doc. No. 396-DC-00000007).

[1053] See Kennedy's handwritten note (undated) (Doc. No. 396-DC-00000008).

[1054] Kennedy 1/15/96 Senate Whitewater Comm. Depo. at 146-148.

[1055] Kennedy's handwritten note (Dec. 22, 1995) (Doc. No. 396-DC-00000007).

[1056] Kennedy 1/15/96 Senate Whitewater Comm. Depo. at 180, 182; Senate Whitewater Comm. Hearing, supra note 1043, at 56-57 (Jan. 16, 1996) (testimony of W. Kennedy).

[1057] Kennedy 1/15/96 Senate Whitewater Comm. Depo. at 184-85; Senate Whitewater Comm. Hearing, supra note 1043, at 310 (Jan. 16, 1996) (testimony of W. Kennedy).

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conceal relevant records.[1058]

Kennedy testified that the Department of Treasury-White House contacts over the referrals did not come up at the November 5 meeting.[1059] In fact, he said there was no discussion of any information attributed to Treasury.[1060] He thought that Lyons and press reports were the sources for most of the information transmitted during the meeting, although he could not be sure none of the information came from government sources, or that government sources did not confirm the information contained in the press inquiries.[1061] He said no suggestion was made at the meeting that government sources should be contacted for confidential government information.[1062]

D. White House Officials Sought Ways to Defuse Concerns as Public Scrutiny Increased.

1. Public Scrutiny of the Madison Failure Increased in Fall 1993.

In November and December 1993, the Whitewater controversy was increasingly scrutinized by the media, Congress, the Department of Justice ("DOJ"), and the Clinton Administration itself. As described earlier in this Report, Paula Casey, the U.S. Attorney for the Eastern District of Arkansas, a Clinton appointee, recused herself and her office from

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[1058] Senate Whitewater Comm. Hearing, supra note 1043, at 55-57 (Jan. 16, 1996) (testimony of W. Kennedy).

Later, the investigation found evidence that the "vacuum" in the files was the result of the removal of relevant Rose Law Firm files by Webster Hubbell and Vince Foster in 1992. See Volume II, Part B, Chapter 2, supra; Volume 3, Part D, supra.

[1059] Kennedy 1/15/96 Senate Whitewater Comm. Depo. at 134.

[1060] Id.

[1061] Id. at 219.

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involvement in the referrals and the Madison Guaranty matter.[1063] Thereafter, a team of career DOJ lawyers took over the case.[1064] In Congress, the House Banking Committee, through Representative James Leach, called upon the RTC to produce Madison Guaranty documents; Committee Chairman Henry Gonzalez also considered holding hearings about the S&L's failure.[1065]

In late December 1993, allegations were published that Whitewater documents may have been taken by White House personnel from the office of Vincent Foster just after his suicide.[1066] On December 23, the DOJ team working on the referrals served a subpoena on David Kendall -- the Clintons' private counsel -- requesting the production of documents relating to Madison Guaranty, Whitewater, and CMS.[1067] There were complaints that Kendall had negotiated the subpoena with the DOJ to forestall public dissemination of the subpoenaed documents.[1068] This contributed to a sense that the DOJ was compromised in its investigation of the Whitewater/Madison Guaranty/CMS matters.

[1062] Id. at 217-18. Lindsey, Eggleston and Lyons all said no confidential government information was discussed in the meeting. Lindsey 3/24/94 Fiske GJ at 54-55; Eggleston 5/17/94 Fiske GJ at 13-14; Lyons 6/5/96 Senate Whitewater Comm. Depo. at 133-34.

[1063] Casey 6/1/95 Int. at 14.

[1064] MacKay 6/27/95 GJ at 5-6, 8-10 (MacKay said Dwight Bostwick, Jim Nixon, and himself were assigned to the case after Casey's recusal). Id. at 4, 8.

[1065] See Facimile cover sheet from Jean Hanson, General Counsel for Treasury Department to Bernie Nussbaum, Counsel to the President (Feb. 3, 1994); Letter from Representative James A. Leach to Roger C. Altman, Interim CEO of the RTC (Feb. 3, 1994) (Doc. Nos. 009-DC-000000051 through 63).

[1066] See, e.g., Frank J. Murray, White House Confirms Search of Foster's Office; Banking, Sex Scandals Spur Damage Control, Wash. Times, Dec. 21, 1993, at A1.

[1067] Grand Jury Subpoena No. 55 (E.D. Ark. Dec. 23, 1993).

[1068] McLarty 4/25/95 GJ at 104-05 (Kendall's arrangement with Justice for the subpoenaed documents created some controversy).

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2. The Enactment of the RTC Completion Act Raised Questions about the RTC's Approach to Resolving Civil Claims Over Madison Guaranty.

In November 1993, Congress passed the RTC Completion Act, which President Clinton signed into law on December 17, 1993.[1069] The Act had a number of significant effects, including: 1) shortening the life of the RTC by advancing its termination date from December 31, 1996 to December 31, 1995; and 2) retroactively extending the statute of limitations for certain classes of tort claims arising out of savings and loan failures, most often fraud and other kinds of intentional wrongdoing.[1070] In the latter classes of cases, the statute of limitations was expanded from three to five years. The date of accrual was to be the later of the dates on which the cause of action arose or on which the failed institution was taken over by the government.[1071]

Madison Guaranty was put into conservatorship on February 28, 1989, and by operation of the RTC Completion Act, the statute of limitations governing fraud and intentional misconduct claims arising from its failure would expire on February 28, 1994.[1072] In January and February 1994, widespread attention focused on the RTC's efforts to determine by that deadline if any civil claims arising out of Madison Guaranty's failure should be pursued.[1073]

3. The President Spoke to Comptroller of the Currency Eugene Ludwig about Madison Guaranty/Whitewater.

At the end of 1993, President Clinton attended the "Renaissance Weekend" held in Hilton

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[1069] See Resolution Trust Corporation Completion Act, Pub. L. No. 103-204, § 1(a) 107 Stat. 2369 (1993).

[1070] See id.

[1071] See id.

[1072] See id.

[1073] See generally Altman 9/12/95 GJ at 57-80; Ickes 7/24/94 Senate Banking Comm. Depo. at 84-96.

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Head, South Carolina.[1074] Also in attendance was Eugene Ludwig, the Comptroller of the Currency.[1075] During the weekend, the President discussed Whitewater with Ludwig.

President Clinton testified he encountered Ludwig in a hall and asked Ludwig if there were people in the financial world who might be able to study public information about Whitewater and give an opinion that would help calm some of the "hysteria" in the news.[1076] The President said he would like to discuss the issue some more.[1077] Ludwig said he would be happy to talk to the President about his request.[1078]

Ludwig said he was seated at a table during one event, and the President sat down next to him.[1079] The President turned to him and said he had done nothing wrong with Whitewater; he simply lost a lot of money, and he did not understand what the "fuss" was about.[1080] The President asked whether Ludwig could advise him.[1081] Ludwig understood the request to mean whether he could render legal or regulatory advice about Madison Guaranty or Whitewater.[1082] Ludwig thought that he was to get back to the President and tell him if he could provide any advice.[1083]

Ludwig then spoke with Hanson, Joel Klein (Deputy White House Counsel), Kennedy,

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[1074] Ludwig 6/21/95 GJ at 8.

[1075] Id. at 8-13.

[1076] W. Clinton 6/12/94 Fiske Depo. at 68.

[1077] Id.

[1078] Id.

[1079] Ludwig 6/21/95 GJ at 8.

[1080] Id. at 9.

[1081] Id. at 9-10.

[1082] Id. at 10.

[1083] Id. at 13.

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Sloan, and possibly Steiner, to get advice on the propriety of his speaking with the President and gathering public information about Madison Guaranty and Whitewater.[1084] In each case, Ludwig was cautioned about having any more discussions with the President about those matters.[1085] Klein told the President he should not approach Ludwig again on the Whitewater subject, and the President agreed.[1086] The next day, Ludwig encountered both the President and Klein, and they all agreed Ludwig would not furnish advice on this matter.[1087]

4. The Whitewater Response Team Was Formed in the White House.

In January 1994, Thomas "Mack" McLarty, then White House Chief of Staff, asked John Podesta, Staff Secretary, under the direction of Harold Ickes, Deputy Chief of Staff, to assemble a group of White House officials and advisors to deal with Whitewater issues.[1088] The group would collect information about Whitewater and develop responses to the mounting media inquiries.[1089]

Membership of the "Whitewater Response Team," as it came to be known, varied depending on the particular issue. Over time, participants included Mack McLarty, Maggie Williams (the First Lady's Chief of Staff), Dee Dee Myers (the White House Press Secretary), Mark Gearan, George Stephanopoulos (senior policy advisor), Joel Klein, Neil Eggleston,

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[1084] Id. at 15-16, 19-20, 22-24; Klein 7/23/94 Senate Banking Comm. Depo. at 98-99; Sloan 4/7/94 Fiske GJ at 58-60.

[1085] Ludwig 6/21/95 GJ at 15-26; Klein 7/23/94 Senate Banking Comm. Depo. at 98-99.

[1086] W. Clinton 6/12/94 Fiske Depo. at 68-69; Klein 7/23/94 Senate Banking Comm. Depo. at 96-97.

[1087] Ludwig 7/24/94 Senate Banking Comm. Depo. at 58-60.

[1088] McLarty 4/25/95 GJ at 111-13; McLarty 5/2/94 Fiske Int. at 3; McLarty 7/21/94 Senate Banking Comm. Depo. at 38-39.

[1089] Ickes 3/17/94 Fiske GJ at 16-19.

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Clifford Sloan, Bruce Lindsey, Bernard Nussbaum, David Gergen (a senior presidential advisor), James Carville (presidential advisor) Paul Begala (presidential advisor), and Lisa Caputo (Mrs. Clinton's press secretary).[1090] The Team (or portions of the Team) met frequently (sometimes twice a day) starting January 3, 1994, and continuing at least through the appointment of Robert Fiske as regulatory Independent Counsel on January 20.[1091]

The meetings focused on the media, public relations, political, and congressional aspects of the Whitewater/Madison controversy. The discussions centered around efforts by the White House and David Kendall to gather the facts about Whitewater and related matters, and then disseminate the White House's version of events through the media and friendly congressional members.[1092]

The Whitewater Response Team discussed whether to contact former Arkansas Securities Commissioner Beverly Bassett Schaffer, a key witness on Mrs. Clinton's representation of Madison Guaranty while a partner at the Rose Law Firm.[1093] Discussions focused on the need to speak with Schaffer to be sure she did not change her story, and to get additional information from her to support the Clintons' version of events.[1094] It was also suggested that the White House simply wanted to prepare her for a possible press availability on the issue of Mrs.

[1090] McLarty 4/25/95 GJ at 113; Ickes 9/5/95 GJ at 10-11; Ickes 3/17/94 FiskeGJ at 17.

[1091] Ickes 9/5/95 GJ at 11-12; Ickes 3/17/94 Fiske GJ at 17.

[1092] McLarty 7/21/94 Senate Banking Comm. Depo. at 158-59.

[1093] Senate Whitewater Comm. Hearing, supra note 1043, at 45-49 (Feb. 15, 1996) (testimony of M. Gearan).

[1094] Id. at 153-59 (testimony of Gearan); Senate Whitewater Comm. Hearing, supra note 1043, at 86-88 (Feb. 22, 1996) (testimony of H. Ickes).

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Clinton's representation of Madison Guaranty before the Commission.[1095]

The Team ultimately rejected sending a White House official or close proxy to meet with Schaffer.[1096] It does appear that Schaffer was approached in January 1994 through her husband by Skip Rutherford, who worked for a Little Rock advertising/public relations firm, about holding a press conference or making herself available to press inquiries.[1097] Schaffer declined.[1098] There is no evidence that this approach to Schaffer was made on behalf of, with the knowledge of, or at the direction of any White House official.

Another topic of discussion at Team meetings was the looming February 28, 1994 statute of limitations for civil claims arising out of Madison Guaranty's failure.[1099] Senate Republicans, led by Senator Alfonse D'Amato, questioned whether the RTC would be able to determine by the statute of limitations deadline if civil claims should be filed against the Clintons, and were calling for the RTC to ask for tolling agreements from the Clintons and other possible civil defendants.[1100]

On January 8, 1994, Ickes asked Eggleston to write a memorandum about the statute of

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[1095] See Handwritten meeting notes (undated) (Doc. No. 442-DC-00006233).

[1096] Lindsey 6/8/96 Senate Banking Comm. Depo. at 48-52, 88-89.

[1097] Id. at 52-53.

[1098] Schaffer 4/29/96 Senate Depo. at 24-25.

[1099] McLarty 4/25/94 Fiske GJ at 118-19; McLarty 5/2/94 Fiske Int. at 5-6; see also McLarty typewritten notes (Feb. 2, 1994) (Doc. No. 001-DC-00000231); Ickes 3/17/9 Fiske 4 GJ at 36-37,48-50; Ickes 8/5/95 GJ at 30-33; see also Ickes notes of meeting (Feb. 2, 1994) (Doc. No. 006-DC-00000005).

[1100] See Letter from United States Senate Committee on Banking, Housing, And Urban Affairs to Mr. Roger Altman, President Interim and Chief Executive Officer of the RTC (Feb. 8, 1994) (Doc. Nos. 001-DC-000000312 through 16).

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limitations for civil actions by the RTC.[1101] On January 17, Eggleston circulated the memorandum to Ickes.[1102] The memorandum had a generic description of the statute of limitations as amended by the RTC Completion Act and applied the statute to the case of Madison Guaranty. The memorandum concluded that because Madison Guaranty was taken over on March 2, 1989, the statute of limitations for covered tort claims expired on March 2, 1994 (five years from the date of the takeover).[1103] The memorandum also noted that the ten year statute of limitations for criminal charges accrued on the date of the allegedly criminal conduct, not on the date of the failed institution's takeover.[1104] The memorandum was copied to Nussbaum.[1105]

[1101] See Ickes assignment memoranda (Jan. 9 -10, 1994) (Doc. No. 442-DC-00006328 through 329; 442-DC-00006260 through 061). Other notes taken by Mr. Ickes and produced to the OIC indicate the statute of limitations was discussed at a Team meeting held at the home of Vernon Jordan on January 16, 1994. See Ickes's handwritten notes (Jan. 16, 1994) (Doc. No. 442-DC-00006230). Notes reflecting the statute of limitations discussion state: "no allegation that [the] Clintons have broken any law and therefore – we don't know what civil refers to - always exception for fraud." Id. Ickes testified he did not remember assigning Eggleston do any legal research about the statute of limitations, though he may have done so. Ickes 9/5/95 GJ at 16. He also did not remember the memorandum. Ickes 9/5/95 GJ at 16; see also Memo from W. Neil Eggleston, Associate Counsel to the President to Harold Ickes, Deputy Chief of Staff at 6 (Feb. 28, 1994) (Doc. No. 006-DC-00000019).

[1102] See Memo from W. Neil Eggleston, Associate Counsel to the President to Harold Ickes, Deputy Chief of Staff (Jan. 17, 1994) (Docs. No. 014-DC-00000015 through 18).

[1103] The source of Mr. Eggleston's information that Madison Guaranty was taken over on March 2, 1989 is unclear. In fact, the institution was put in conservatorship on February 28, 1994. See 54 Fed. Reg. 9890 (1989). The deadline for filing covered civil claims arising out of Madison Guaranty's failure was February 28, 1994, not March 2, 1994. See Resolution Trust Corporation Completion Act, Pub. L. No. 103-204, § 1(a) 107 Stat. 2369 (1993).

[1104] See Memo from W. Neil Eggleston, Associate Counsel, to the President to Harold Ickes, Deputy Chief of Staff at 2 (Jan. 17, 1994) (Doc. No. 014-DC-00000016).

[1105] See id.

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5. Roger Altman's Diary Reflected Anxiety at the White House about Whitewater in January 1994.

Altman's diary in January 1994 recounted a conversation he had with Williams about Mrs. Clinton and the possible appointment of an Independent Counsel.[1106] According to the diary, Williams told Altman that the First Lady was "'paralyzed'" by Whitewater and that "if we don't solve this 'within the next two days,' you don't have to worry about her schedule on health care."[1107] Altman also wrote: "Maggie's strong inference was that the W[hite] H[ouse] was trying to negotiate the scope of an independent counsel with Reno and having enormous difficulty" and "HRC [Hillary Rodham Clinton] doesn't want (the counsel) poking into 20 years of public life in Arkansas."[1108]

Williams said she did not remember any such conversation with Altman.[1109] Although she agreed she frequently commented about how the Whitewater issue was taking attention away from health care, she denied talking about Mrs. Clinton's personal feelings with Altman or anyone else.[1110] She claimed she did not even speak with the First Lady about whether the President should ask for the appointment of an independent counsel, but she knew from others,

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[1106] See Altman Diary Entry (Jan. 11, 1994) (Doc. No. 001-DC-0000492).

[1107] See id.

[1108] See id. Altman testified he did not to remember the specific conversation with Williams from his diary, but testified it must have taken place and that the entry must be accurate. Altman 9/12/95 GJ at 52-53. He stressed it was his own inference from his conversation with Williams that the White House was trying to control the scope of an independent counsel's jurisdiction, which might have been wrong or unjustified. Id. at 54-55.

[1109] Williams 3/25/94 Fiske GJ at 70-71; Williams 7/20/94 Senate Banking Comm. Depo. at 147-48.

[1110] Williams 6/2/95 GJ at 68.

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such as Nussbaum, that Mrs. Clinton was against such an appointment.[1111]

No other witness testified that Williams had ever said that Mrs. Clinton was "paralyzed" by Whitewater or that Mrs. Clinton was afraid of an independent counsel looking into her life in Arkansas. In addition, the OIC obtained no evidence showing or implying that the White House tried to control the scope of an independent counsel's jurisdiction through discussions with the DOJ.

6. Treasury Secretary Lloyd Bentsen Met with George Stephanopoulos about Whitewater.

In Altman's January 11 diary entry, he noted "[Treasury Secretary] LMB [Lloyd M. Bentsen] went over to [s]ee George [Stephanopoulos] on Whitewater yesterday; to argue for 'lancing the boil.'"[1112] Bentsen's calendar for January 10 shows a 5:30 p.m. meeting with Stephanopoulos at the White House, which Bentsen thought was the meeting referred to in Altman's diary.[1113] Bentsen said Altman's diary was accurate: Bentsen went to Stephanopoulos to advise that the White House should "lance the boil" on Whitewater by making full disclosure to put the controversy behind it.[1114]

[1111] Id. at 70-72. Williams denied taking part in any discussions within the White House about narrowing the scope of an independent counsel's jurisdiction. Id. at 71.

[1112] See Steiner Diary Entry (Jan. 11, 1994) (Doc. No.001-DC-00000492).

[1113] See Bentsen calendar (Jan. 10, 1994) (Doc. No. 274-DC-00002216); Bentsen 7/12/95 Int. at 6; Bentsen 7/26/94 Senate Banking Comm. Depo. at 18-19.

[1114] Bentsen 7/26/94 Senate Banking Comm. Depo at 20. Although Stephanopoulos did not remember this specific conversation, he is certain it occurred. Stephanopoulos 9/8/95 GJ at 23-24.

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7. Jean Hanson Met with RTC Officials about Madison Guaranty after Republican Senators Asked for Tolling Agreements.

On January 11, 1994, eight Republican Senators wrote to Attorney General Janet Reno urging her to seek tolling agreements from a number of potential civil defendants in the Madison Guaranty matter, including the Clintons, the McDougals, Tucker, Ward, and the Rose Law Firm. Altman received a copy of their letter in his capacity as the RTC's CEO.[1115] Altman forwarded a copy of the letter to Secretary Bentsen along with a note indicating that Hanson was "assembling the facts."[1116]

On January 12, 1994 -- the day that President Clinton announced he would ask the Attorney General to appoint an independent counsel on the Madison Guaranty/Whitewater matter -- Hanson had a meeting in her office about the "Statute of Limitations Issue" with James Barker (who until January 17 was the RTC's Acting General Counsel), John Bowman, and Thomas Hindes, Chief of the RTC's PLS.[1117] Barker said Hanson told them that Altman was concerned about the Senators' letter and wanted to make a public statement that the Madison Guaranty matter already was investigated and was closed out.[1118]

Hindes and Barker said that was not be a good idea because the investigation was cursory and there had not yet been a reexamination of potential civil claims.[1119] The participants

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[1115] See Letter from Senate Banking Committee to Attorney General Janet Reno (Jan. 11, 1994) (Doc. Nos. 001-DC-00000347 through 48) (letter was signed by Senators D'Amato, Dole, Meyers, Parrish, Clinger, Fish Jr., Pressler, and Michell).

[1116] See Memo from Roger Altman, President Interim and CEO of the RTC to Lloyd Bentsen, Secretary of the Treasury (Jan. 11, 1994) (Doc. No. 274-DC-00000329).

[1117] Barker 5/2/95 GJ at 33-34; see also Hanson calendar (Jan. 12, 1994) (Doc. No. 007-DC-00005929) (indicating the meeting took place at 3:00 p.m.).

[1118] Barker 5/2/95 GJ at 34.

[1119] Id. at 34-36, 38.

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discussed what could be said about the investigation and the statute of limitations.[1120] Hindes was asked to prepare a chronology of Madison Guaranty events to help in furnishing Altman with background information.[1121] Barker testified Hanson asked for copies of the criminal referrals, but Bowman said that would be inappropriate.[1122]

Hindes testified he briefed Hanson on the Madison Guaranty investigation and said he would be ready by mid-February to make a recommendation about possible civil claims.[1123] Hanson asked if he could brief Altman about the criminal referrals,[1124] but Hindes said he had not seen them and would have to look at them first.[1125]

Hindes testified that along with Bowman and Barker, he asked if it was a good idea for Altman or Hanson to receive briefings on the referrals.[1126] Hindes recalled Hanson deferred making a decision about this, saying she would be in touch if a briefing was needed.[1127] Bowman, Barker, and Hindes then met in Bowman's office and discussed their reservations about Altman or Hanson being briefed on the referrals.[1128]

[1120] Id. at 37-38.

[1121] Id. at 38-39; Hindes did prepare a chronology; see Facsimile from John Bowman to Jean Hanson, General Counsel for Treasury Department (Jan. 25, 1994), and Memo from Thomas L. Hindes, Assistant General Counsel, to James Barker, Acting General Counsel (Jan. 13, 1994) (Doc. Nos. 007-DC-000005929 through 31).

[1122] Barker 5/2/95 GJ at 40-41.

[1123] Hindes 5/9/95 GJ at 37-39; see also Hindes 11/10/94 Fiske Int. at 6-7.

[1124] Hindes 5/9/95 GJ at 39; Hindes 11/10/94 Fiske Int. at 7.

[1125] Hindes 5/9/95 GJ at 39-41; Hindes 11/10/94 Fiske Int. at 7.

[1126] Hindes 5/9/95 GJ at 41-42; Hindes 11/10/9 Fiske 4 Int. at 7.

[1127] Hindes 5/9/95 GJ at 40; Hindes 11/10/94 Fiske Int. at 7.

[1128] Hindes 5/9/95 GJ at 46-47; Hindes 11/10/94 Fiske Int. at 7. Bowman testified he did not remember a discussion of Hanson getting copies of the referrals. Bowman 6/7/95 GJ at 50. He also did not remember discussing whether Altman should be briefed on the referrals. Id. at

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On January 14, 1994, James Dudine, the RTC's Chief of Investigations in Washington, D.C., e-mailed the RTC's Kansas City office asking for summaries of the referrals to brief Altman.[1129] A summary section of each referral was sent to Dudine.[1130] Dudine gave the summaries he received, and copies of the referrals, to Ellen Kulka, who started as the RTC's permanent General Counsel on January 17.[1131]

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51. He did remember there was a brief meeting with Hindes and Barker in his office right after the meeting with Hanson. Id. at 52-53.

Hanson vaguely remembered a meeting on January 12 where there was a discussion about whether the prior Madison Guaranty investigation was adequate. Hanson 9/29/95 GJ at 70-72. She denied asking for a copy of the referrals, or asking for Altman to be briefed on them. Id. at 74-75.

[1129] See E-mail from James R. Dudine to L. Richard Iorio (Jan. 14, 1994) (Doc. No. 044-DC-00004995) ("In preparation for a briefing of CEO Altman on the Madison Criminal referrals, could you produce, or have you on hand, a brief summary of each referral, in plain English that tells the story in a way that anyone could quickly grasp the substance of the matter? Sound bites, if you will"); see also Dudine 5/13/94 Fiske Int. at 7.

[1130] See E-mail from Michael X. Caron to James R. Dudine (Jan. 14, 1994) (Doc. No. 044-DC-00004994). Altman claimed he never requested or received a briefing on the referrals, and never requested or received copies of any of the criminal referrals. Altman 9/12/95 GJ at 59-60; Altman 9/7/95 Int. at 5.

Katsanos remembered telling Dudine to be prepared to brief senior officials at the RTC about the criminal referrals. Katsanos 4/26/95 GJ at 71-72. Katsanos thought this conversation took place in October 1993 to provide senior staff with information to respond to the press inquiries then. Katsanos 4/26/95 GJ at 72; Dudine 5/13/94 Fiske Int. at 7.

[1131] Dudine 5/13/94 Fiske Int. at 7. Hindes testified that after January 12 he did not prepare for a briefing of Altman on the referrals because he was waiting to hear back from Hanson. Hindes 5/9/95 GJ at 48. He had no knowledge of the origin of Dudine's January 14 e-mail that mentioned a briefing of Altman. Hindes 5/9/95 GJ at 49-50.

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8. Roger Altman Was Briefed on the Statute of Limitations Issue and Considered Recusing from Madison Guaranty Matters.

On January 25, 1994, Senator D'Amato sent a letter to Altman, again urging that the RTC seek tolling agreements from all relevant potential defendants in the Madison Guaranty matter.[1132] Senator D'Amato also asked how the RTC planned to handle the statute of limitations deadline.[1133] The RTC drafted a response stating the RTC would vigorously pursue all appropriate claims arising from the Madison Guaranty matter, and take all necessary steps required by the imminent deadline, including seeking voluntary tolling agreements.[1134]

The last week of January 1994, Kulka and others began preparing Altman for his testimony before the Senate about the semi-annual oversight hearing.[1135] (Altman's letter in response was sent the same day).[1136] Kulka told Altman that

> The issues that were raised were how could the agency come to any conclusions and decide whether to take action in the very short period of time that we had to come to it, and in discussing that, I think I explained to Mr. Altman that in certain circumstances, [when] the statute was about to run; the agency has attempted, as a matter of practice, depending on the facts and circumstances, to obtain a tolling agreement from potential defendants that would voluntarily extend the statute of limitations for a period of time that was negotiated and agreed upon by the parties, the agency and the defendant who might be willing to enter into it . . . .
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> We told Mr. Altman that we would put ourselves in a position of either making a

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[1132] See Letter from Senator Alfonse D'Amato to Roger Altman, President Interim and CEO of RTC (Jan. 25, 1994) (Doc. No. 007-DC-00003736-37).

[1133] See Letter from Senator Alfonse D'Amato to Roger Altman, President Interim and CEO of RTC (Jan. 25, 1994) (Doc. No. 007-DC-00003736-37).

[1134] See Letter from Roger C. Altman, Interim CEO of RTC, to Senator Robert J. Dole (Feb. 1, 1994) (Doc. No. 007-DC-00003753).

[1135] Kulka 6/2/94 Fiske GJ at 16, 18-19; Kulka 7/19/94 Senate Banking Comm. Depo. 27-29; Altman 9/12/95 GJ at 66-67.

[1136] See Letter from Roger C. Altman, Interim CEO of RTC, to Senator Alfonse M. D'Amato (Feb. 1, 1994) (Doc. No. 007-DC-00003738).

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> decision, making a recommendation to whomever was the ultimate decider at the agency, about whehter to bring an action by February 28th, or to be in a position to seek tolling agreements. With respect to people who might otherwise be interested in suing, that we would not guarantee we would get the tolling agreements, and to the extent that we thought we had a reasonable basis to bring a case and it would not be a frivolous action or one in which we might be held accountable for doing an improper thing, we would file the action if we could not obtain the tolling agreement, assuming whoever had the right to make the decision at the agency decided to go forward with respect to various people who we thought would be recommended.[1137]

Kulka said potential defendants might make such agreements hoping that further investigation might lead the RTC not to file suit at all.[1138] Kulka told Altman that the February 28 deadline did not leave the RTC as much time as it would have preferred, but that the agency would be able to make a complete presentation to Altman before the deadline.[1139] Altman said he told Kulka that the decision on which alternatives to pursue was hers.[1140] Shortly after his meeting with Kulka, Altman spoke with the White House about the statute of limitations on Madison Guaranty.[1141]

9. Roger Altman Met with Secretary Lloyd Bentsen and Jean Hanson about Recusal.

On February 1, at her confirmation hearing before the Senate Banking Committee, Ricki Tigert, a friend of the President nominated to be chairman of the board of the FDIC, ran into opposition for refusing to state whether she would recuse herself from Madison Guaranty-related matters before the FDIC.[1142] Tigert's experience prompted Altman to consider whether he should

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[1137] Kulka 7/6/94 Treas. IG at 17-19.

[1138] Kulka 5/5/95 GJ at 26; Kulka 7/6/94 Treas. IG at 19.

[1139] Altman 7/25/94 Senate Banking Comm. Depo. at 409-14.

[1140] Altman 9/12/95 GJ at 72.

[1141] Id. at 78-79.

[1142] Id. at 75-76.

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recuse himself from Madison Guaranty matters at the RTC.[1143] That day, Altman discussed his possible recusal with senior Treasury and RTC officials and asked for their advice.[1144] Hanson and Kulka told Altman that the law did not mandate recusal because of his friendship with the Clintons, but that as a political matter he should because he already had said he would follow Kulka's recommendation on Madison Guaranty, and failure to step aside would put him in a "no win" position.[1145]

In the early afternoon of February 1, 1994, after his briefing on the statute of limitations issue and his discussion of possible recusal with RTC and Treasury officials, Altman met with Secretary Bentsen and Hanson in the Secretary's office.[1146] Altman testified he brought up the issue of whether he should recuse, and asked Bentsen for advice.[1147] Altman said Bentsen described recusal as a personal decision, but encouraged him to recuse himself in his own self-

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[1143] Id. at 75-77.

[1144] Id. at 76-78; Hanson 9/29/95 GJ at 75.

[1145] Kulka 7/19/94 Senate Banking Comm. Depo at 55-56; Hanson 9/29/95 GJ at 77. Dennis Foreman, the Deputy General Counsel of the Treasury and Designated Agency Ethics Official, testified that before February 2, Hanson asked him for his quick reaction to the question whether Altman should recuse himself, and Foreman responded he thought Altman should do so. Foreman 6/27/95 GJ at 30-31. Hanson said she agreed with Foreman. Id. at 30. Foreman said Hanson returned to him some short time later and said she had been talking with Altman, told him her view on recusal, and that Altman was leaning towards recusal. Id. at 31.

[1146] Altman 9/12/95 GJ at 72-77; Altman 9/7/95 Int. at 8.

[1147] Altman 9/12/95 GJ at 75; see also Altman 5/13/94 Statement to the Office of the Independent Counsel at 10; Altman 9/7/95 Int. at 8. Hanson testified Altman told the Secretary he had decided to recuse himself from the Madison Guaranty matter, and that Hanson had recommended it. Hanson 9/29/95 GJ at 86. Hanson also testified that Altman had previously told her that he decided to recuse. Hanson 3/16/94 Fiske Int. at 14; Hanson 7/16/94 Senate Banking Comm. Depo. at 315. Secretary Bentsen wanted to know who would handle decisions about Madison Guaranty if Altman recused himself, and Altman responded that decisions would be made by John Ryan, the RTC's Deputy CEO, and Kulka. Hanson 4/21/94 Fiske GJ at 80; Hanson 9/29/95 GJ at 87; Hanson 7/16/94 Senate Banking Comm. Depo. at 315.

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interest.[1148] Altman remembered Hanson agreed he should recuse.[1149] He could not remember if he told Secretary Bentsen he would follow this advice, or if he just noted that the Secretary's advice was sound.[1150] Altman also did not think he told Secretary Bentsen he would be discussing the statute of limitations issue for Madison Guaranty-related matters with the White House.[1151]

[1148] Altman 9/12/95 GJ at 77; Altman 5/13/94 Statement to the Office of the Independent Counsel at 10; Altman 9/7/95 Int. at 8-9. Hanson remembered Secretary Bentsen said Altman's decision to recuse sounded correct. Hanson 4/21/94 Fiske GJ at 61-62; Hanson 3/16/94 Fiske Int. at 15; Hanson 7/16/94 Senate Banking Comm. Depo. at 316. Altman said his decision did not matter because he would follow Kulka's recommendation anyway. Hanson 7/16/94 Senate Banking Comm. Depo. at 316. Hanson said Altman told Bentsen that Altman thought he should talk to the White House because the officials there should hear about Altman's recusal directly from Altman rather than another source. Hanson 3/16/94 Fiske Int. at 15; Hanson 7/11/94 Treas. IG at 154; Hanson 7/16/94 Senate Banking Comm. Depo. at 316.

Secretary Bentsen testified that at the meeting Altman said he was considering recusal because of his friendship with the Clintons. Bentsen 7/12/94 Fiske Int. at 10; but see Bentsen 7/26/94 Senate Banking Comm. Depo. at 27 (Bentsen explained members of Congress were calling for him to recuse). Bentsen said he told Altman he had to decide for himself, but he was sympathetic to Altman's situation. Senate Banking Comm. Hearing, supra note 831, at 33, 72-73, 127 (Oct. 3, 1994) (testimony of Bentsen); Bentsen 7/12/95 Int. at 11. Bentsen thought that Altman might have understood Bentsen's sympathy to be a recommendation in favor of recusal, but that was not Bentsen's intent. Senate Banking Comm. Hearing, supra note 831, at 33,72-73 (Oct. 3, 1994) (testimony of L. Bentsen). Bentsen testified there was no discussion at this meeting about Altman's discussing recusal with the White House. Bentsen 7/26/94 Senate Banking Comm. Depo. at 30; Bentsen 7/12/95 Int. at 10. He thought that Altman left the meeting still undecided about recusal. Bentsen 7/12/95 Int. at 10.

[1149] Altman 9/12/95 GJ at 77; Altman 9/7/95 Int. at 8.

[1150] Altman 9/12/95 GJ at 77-78.

[1151] Id. at 78. Hanson said she should accompany him if he planned to go to the White House to discuss both the recusal and legal issues. Hanson 9/29/95 GJ at 88-90; Hanson 3/16/94 Fiske Int. at 15-16; Hanson 7/11/94 Treas. IG at 154-55. Hanson testified another purpose of the proposed White House meeting was to brief the White House on the Madison Guaranty statute of limitations issue, because Altman had previously told Hanson that White House officials had expressed some confusion over that. Hanson 9/29/95 GJ at 89-90; Hanson 4/21/94 Fiske GJ at 49; Hanson 3/16/94 Fiske Int. at 15-16; Hanson 7/11/94 Treas. IG at 154-55.

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10. Roger Altman Arranged a February 2, 1994 White House Meeting.

Hanson thought that later on February 1 she suggested that Altman should make sure Nussbaum attended the White House gathering.[1152] Altman remembered that after his February 1 briefing with Kulka, he told Hanson that they "ought to explain the process to the White House."[1153] Altman testified the impetus for calling the meeting was the inquiries he was receiving from Congress.[1154] Because he was providing statute of limitations-related information to Congress, he thought he should provide the same information to the White House.[1155]

That same day, Altman called McLarty and asked for a meeting with both McLarty and Ickes.[1156] Altman said he wanted to meet at the White House to talk about the procedural options the RTC had in view of the approaching statute of limitations deadline.[1157]

11. Jean Hanson Prepared Talking Points for the February 2 Meeting.

Hanson drafted one page of talking points for Altman to use at his White House briefing.[1158] The document described the Republican Senators' request for tolling agreements, the RTC Completion Act's extension of the statute of limitations for certain kinds of civil claims, and

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[1152] Hanson 3/16/94 Fiske at 17; Hanson 7/11/94 Treas. IG at 155.

[1153] Altman 3/15/94 Fiske Int. at 3.

[1154] Altman 9/12/95 GJ at 69-70; Altman 5/13/94 Statement to the Office of the Independent Counsel at 12; Altman 9/7/95 Int. at 9-10.

[1155] Altman 9/12/95 GJ at 70; Altman 5/13/94 Statement to the Office of the Independent Counsel at 12; Altman 9/7/95 Int. at 10.

[1156] Altman thought that he spoke with McLarty to set up the meeting. Altman 9/12/95 GJ at 78-79. Ickes thought that he spoke with Altman to set up the meeting. Ickes 9/5/95 GJ at 21-22; Ickes 3/17/94 Fiske GJ at 28; Ickes 7/12/94 Senate Banking Comm. Depo. at 104. McLarty thought that at most, he referred Altman to Ickes to set up the meeting. McLarty GJ at 121.

[1157] Altman 9/12/25 GJ at 78-79.

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the statute's expiration on February 28.[1159] The talking points discussed three options available to the RTC for potential civil claims arising from Madison Guaranty's failure.[1160] They also explained certain negative aspects as to those options -- for example, in the case of the RTC's seeking tolling agreements, such agreements had to be consented to by the potential defendants; or for the protective lawsuit option, the suit had to be non-frivolous, or the filing party risked sanctions.[1161] The document noted John Ryan and Ellen Kulka supervised the RTC's investigation, and said: "It is not certain when the analysis will be completed, but it will be before February 28."[1162] The last talking point on the document -- item number twelve – stated as to Altman: "I have decided that I will recuse myself from the decision making process, as interim C.E.O. of the RTC, because of my relationship with the President and Mrs. Clinton."[1163]

Dennis Foreman, the Department of Treasury's Designated Agency Ethics Officer, testified that on the afternoon of February 2, Hanson came to his office, told him she was going to the White House with Altman, and asked Foreman to look at the talking points.[1164] He

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[1158] See Talking points for Roger Altman: Information meeting with Mack McLarty (Feb. 2, 1994) (Doc. No. 001-DC-00000231) (produced by Altman).

[1159] See Talking points for Roger Altman: Information meeting with Mack McLarty (Feb. 2, 1994) (Doc. No. 007-DC-00000158) (produced by Hanson), Outline of RTC/Madison Guaranty Issues (Feb. 10) (Doc. No. 007-DC-00000159).

[1160] See Talking points for Roger Altman: Information meeting with Mack McLarty (Feb. 2, 1994) (Doc. No. 007-DC-0000158) (produced by Hanson).

[1161] See id.

[1162] Id.

[1163] Id.

[1164] Foreman 6/27/95 GJ at 31, 36-38. Hanson did not remember showing Foreman the talking points, only that she sought out Foreman for his political and ethical advice on their upcoming White House meeting. Hanson 3/16/94 Fiske Int. at 16; Hanson 7/11/94 Treas. IG at 164-65; Hanson 7/15/94 Treas. IG at 59. She claimed Foreman saw no problem with a meeting

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remarked that the document had public information except for the recusal point.[1165] Foreman was surprised by Altman's recusal decision, because he had understood from Hanson that, Altman was only leaning toward recusal.[1166] He raised this issue with Hanson to ensure that item twelve was factually true, pointing out that if Altman decided against recusal after the White House meeting, item twelve on the talking points could cause problems if the issue ever surfaced in public.[1167] Foreman did not remember if Hanson responded to his point.[1168]

Before the White House meeting, Hanson gave Altman a copy of the talking points.[1169] Hanson testified that she asked Altman if he had read item twelve (about his recusal) and if he was inclined to change his mind.[1170] Hanson testified she told Altman that if he was inclined to change his mind she would change the last talking point.[1171] Altman said the recusal point was fine.[1172] Hanson claimed she wanted the recusal point to be accurate, but if Altman did eventually change his mind she did not want it to appear that Altman changed his mind because of the White House meeting.[1173]

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to discuss the statute of limitations and Altman's recusal. Hanson 7/11/94 Treas. IG at 165-66; Hanson 7/15/94 Treas. IG at 59.

[1165] Foreman 6/27/95 GJ at 31, 36-38.

[1166] Id. at 40.

[1167] Id. at 40-46.

[1168] Id. at 39, 45-46.

[1169] Hanson 3/16/94 Fiske Int. at 16.

[1170] Id.; Hanson 9/29/95 GJ at 92; Hanson 4/21/94 Fiske GJ at 60.

[1171] Hanson 4/21/94 Fiske GJ at 60; Hanson 9/29/95 GJ at 92; Hanson 7/11/94 Treas. IG at 155; Hanson 3/16/94 Int. at 16.

[1172] Hanson 4/21/94 Fiske GJ at 60.

[1173] Hanson 3/16/94 Fiske Int. at 16-17. Altman did not remember discussing the talking points with Hanson, saying he first saw them on the way to the White House. Altman 3/22/94 Fiske GJ at 47; Altman 9/12/95 GJ at 82-83; Altman 5/13/94 Statement to the Office of the

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12. The February 2, 1994 White House Meeting.

At about 5:00 p.m. on February 2, 1994, a meeting took place in McLarty's office at the White House between Hanson, Altman, Ickes, Nussbaum, Eggleston, and Williams. Altman reviewed the talking points at the beginning of the meeting.[1174] Hanson remembered that during Altman's discussion about the statute of limitations issue, Williams asked if the RTC would have to get tolling agreements from the potential defendants if the investigation could not be finished by February 28.[1175] Hanson remembered Altman answered, "Yes."[1176]

Ickes claimed Altman said it was unclear whether the RTC would fully complete its investigation before February 28.[1177] Ickes also testified he understood that although the RTC would not be able to conclude a final investigation and analysis of potential claims by February 28, the agency would be able to determine by then whether there were potential claims, and if necessary, file suits to preserve those claims -- even if the agency later decided to amend the complaints or dismiss the cases.[1178] Ickes took notes at the meeting.[1179] They reflect Altman's

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Independent Counsel at 12. Altman thought Hanson added the recusal item to the talking points on her own to nudge him into announcing his recusal. Altman 9/12/95 GJ at 85; Altman 5/13/94 Statement to the Office of the Independent Counsel at 12. He did not remember if he asked Hanson to prepare the talking points. Altman 9/12/95 GJ at 82; Altman 9/8/95 Treas. IG at 10.

[1174] Altman 3/22/94 Fiske GJ at 53-54; Hanson 3/16/94 Fiske Int. at 17. Only Nussbaum remembered Altman started by saying the RTC already had provided a similar statute of limitations briefing to Congress. Nussbaum 3/17/94 Fiske at 52-53.

[1175] Hanson 4/21/ Fiske GJ at 66-67; Hanson 3/16/94 Fiske Int. at 15.

[1176] Hanson 4/21/94 Fiske GJ at 67; Hanson 7/11/94 Treas. IG at 174; Hanson 7/16/94 Senate Banking Comm. Depo. at 358.

[1177] Ickes 9/5/95 GJ at 29; Ickes 3/17/94 Fiske GJ at 37.

[1178] Senate Banking Comm. Hearing, supra note 831, at 374-75 (Aug. 4, 1994) (testimony of H. Ickes).

[1179] See Ickes's handwritten notes (Feb. 2, 1994) (Doc. No. 006-DC-00000005); Ickes 7/24/94 Senate Banking Comm. Depo. at 118.

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presentation about the February 28 deadline for the RTC to decide whether to file a claim for fraud, preserve a claim by filing a protective lawsuit, or obtain a tolling agreement.[1180]

Ickes was questioned about the February 2 meeting during his July 24, 1994 Senate Banking Committee deposition. When he was asked what Altman said about the statute of limitations issue, Ickes's counsel asked that his client be permitted to review his notes of that meeting to refresh his memory.[1181] The Democratic Majority Counsel refused and insisted that Ickes attempt to answer the questions with his best present memory.[1182] Ickes testified:

> [H] e discussed . . . that that investigation was going to take a longer period of time to conclude and that it might not conclude until after the expiration of the statute of limitations.
> . . . .
>
> [H] e said, at least in so many words, that it was his understanding that the investigation probably would not be concluded and that a determination could not be made by the RTC's general counsel as to whether there was a basis for a civil claim until after the expiration of the statute of limitations had applied to that particular investigation. . . .
>
> I just wanted to get a sense from him as to how long he thought it was going to take for the general counsel to wrap up the investigation and to make a determination -- or I guess it was a recommendation. I think that's the phrase that Altman used, that general counsel would make a recommendation as to what action, if any, should be taken based on the investigation. And basically, I was trying to get a sense from him, because this was pretty new to me, as to his best estimate of when that investigation would be concluded and a recommendation could be made because as I understood it, general counsel made a recommendation and that recommendation was then moved up the chain in the RTC to determine whether or not the recommendation would be acted upon. . . .
>
> [T]he general information from Altman was based on what he knew, that it was unlikely that the investigation could be completed and a recommendation made by

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[1180] See Ickes's handwritten notes (Feb. 2, 1994) (Doc. No. 006-DC-00000005).

[1181] Ickes 7/24/94 Senate Banking Comm. Depo. at 119, 121.

[1182] Id. at 122.

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the general counsel prior to the expiration of the statute of limitations.[1183]

Ickes tried to clarify his July 24 testimony two weeks later at a Senate Banking Committee hearing on August 4, 1994:

> As I understood it, the RTC probably would need more time to complete a thorough investigation and an internal review, before making a final determination as to whether there were sufficiently meritorious claims to justify committing agency resources to pursuing a full-blown lawsuit. But I also understood that the RTC could file a protective lawsuit to preserve future claims, if there was not a tolling agreement.
>
> It has been suggested, based on my deposition, that I did not believe the RTC would be in a position to file such a protective suit by the February 28th deadline. That is simply not so. To the contrary, I understood that the RTC was in a position to file such a protective claim if it did not obtain tolling agreements.[1184]

Ickes also claimed that if he had he been able to review his notes he would have remembered that Altman had said the RTC would be able to (in the words of his notes) "commence litigation to preserve claim."[1185]

Ickes's explanation was consistent with his March 17, 1994 testimony before the grand jury. Using his notes to refresh his memory, he recalled that Altman said at the February 2 meeting that one alternative was for the RTC to file protective suits to preserve its claims.[1186] Williams asked if the potential defendants' private counsel would get a similar briefing on the RTC's procedures and on the statute of limitations.[1187] Altman was not sure, but thought his

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[1183] Ickes 7/24/94 Senate Banking Comm. Depo. at 120-23.

[1184] Senate Banking Comm. Hearing, supra note 831, at 212 (Aug. 4, 1994) (testimony of Ickes).

[1185] See Ickes's handwritten notes (Feb. 2, 1994) (Doc. No. 006-DC-00000005).

[1186] Ickes 3/17/94 Fiske GJ at 37.

[1187] Altman 9/12/95 GJ at 90-91.

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response was something like "I guess so."[1188] Williams did not remember asking that question, but said it was possible.[1189]

Hanson's tenth talking point for Altman stated that Kulka and Ryan were supervising the Madison Guaranty investigation.[1190] Altman and Hanson both testified that either at that point or later when Altman reached item twelve, Altman announced he had been told to recuse and that he intended to follow that advice.[1191] Nussbaum recalled Altman said either he intended to recuse or he was considering it.[1192] Eggleston and Ickes testified Altman said he was considering the issue.[1193] Williams remembered Altman said hypothetically that if he were to recuse, the Madison Guaranty decision maker would be Ryan.[1194]

However Altman phrased the recusal issue, almost all participants remembered that at this point Nussbaum's demeanor became negative.[1195] Altman also remembered Williams discouraged recusal.[1196] Altman testified Nussbaum and Williams questioned him about the

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[1188] Id. at 91.

[1189] Williams 3/25/94 Fiske GJ at 88.

[1190] See Talking points for Roger Altman: Information meeting with Mack McLarty (Feb. 2, 1994) (Doc. No. 001-DC-00000231) (produced by Altman).

[1191] Altman 9/12/95 GJ at 92; Hanson 4/21/94 Fiske GJ at 48-49, 163.

[1192] Nussbaum 3/17/94 Fiske GJ at 56.

[1193] Eggleston 7/19/94 Senate Banking Comm. Depo. at 99-100; Eggleston 3/31/94 Fiske GJ at 55-56; Ickes 3/17/94 Fiske GJ at 41.

[1194] Williams 3/10/94 Fiske GJ at 49-50.

[1195] At this point in the meeting, Nussbaum became "agitated," "displeased," or "pugnacious." Hanson 3/16/94 Fiske Int. at 14; Altman 9/12/95 GJ at 101; Altman 7/25/94 Senate Banking Depo. at 455-56.

[1196] Altman 9/12/95 GJ at 102; Altman 3/22/94 Fiske GJ at 61.

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recusal issue and about his replacement.[1197] Hanson remembered Nussbaum asked if Ryan and Kulka would make the decisions on Madison Guaranty without Altman.[1198] Altman said he had total confidence in Kulka and that he would follow her recommendation anyway,[1199] rendering his participation superfluous.[1200] Hanson recalled Nussbaum questioned Altman about why he felt he should recuse.[1201]

Nussbaum said he told Altman he should recuse if there was a legal or ethical requirement to do so,[1202] but absent such a requirement, even if he planned to follow Kulka's recommendation, his continued participation would assure thoroughness and fairness by his staff.[1203] Nussbaum said recusal was Altman's decision to make.[1204] Altman testified he felt pressured by Nussbaum about Altman's decision to follow whatever decision Kulka made.[1205]

Ickes remembered asking why Altman thought he should recuse from something not yet before him; he also questioned whether Altman's friendship with the President was a valid basis

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[1197] Altman 5/13/94 Statement to the Office of the Independent Counsel at 13; Altman 3/22/94 Fiske GJ at 61-62. Williams was the only White House meeting participant to remember that she offered Altman "advice," about recusal issue by lamenting that many people of integrity in the government were saying that they could not participate in anything. Williams 3/10/94 Fiske GJ at 50-52. Williams agreed Nussbaum said the decision was Altman's. Williams 6/2/95 GJ at 83-84.

[1198] Hanson 7/11/94 Treas. IG at 173.

[1199] Hanson 7/16/94 Senate Banking Comm. Depo. at 316.

[1200] Hanson 7/11/94 Treas. IG Int. at 174; Altman 5/13/94 Statement to the Office of the Independent Counsel at 13; Altman 3/22/94 Fiske GJ at 62.

[1201] Hanson 7/11/94 Treas. IG at 174.

[1202] Nussbaum 3/17/94 Fiske GJ at 59; see also Eggleston 7/19/94 at Senate Banking Comm. Depo at 124.

[1203] Nussbaum 3/17/94 Fiske GJ at 60-61.

[1204] Id. at 62.

[1205] Altman 3/22/94 Fiske GJ at 62.

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for recusal.[1206] Ickes recalled giving his opinion that Altman should not recuse, but he stressed it was Altman's decision.[1207]

During the meeting, Ickes said that if Altman were going to recuse it was better to do so sooner rather than later.[1208] The meeting ended with Altman telling the group that he would "sleep on" the recusal issue.[1209] Nussbaum replied that was all the White House could ask for.[1210]

13. Roger Altman Discussed the White House Meeting with Joshua Steiner.

After his February 2 meeting at the White House, Altman met with Joshua Steiner, the Treasury Chief of Staff, and discussed the meeting with him. Altman told Steiner that the officials he met with were "disquieted" by his recusal point, which he did not understand because he had told them the decision on Madison Guaranty would be made by Kulka anyway.[1211] Altman could not remember what he told Steiner about Nussbaum's reaction, but he testified he probably mimicked Nussbaum's reaction.[1212]

Altman told Steiner that Nussbaum had also voiced concerns about the RTC's reputation for being partisan against Democrats, so that without Altman's involvement in the Madison

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[1206] Ickes 9/5/95 GJ at 36-37.

[1207] Ickes 7/24/94 Senate Banking Comm. Depo. at 135.

[1208] See Hanson 3/16/94 Fiske Int. at 18; Hanson 4/21/94 Fiske GJ at 68; Hanson 7/11/94 Treas. IG 176; Hanson 7/16/94 Senate Banking Comm. Depo. at 358; Altman 9/12/95 GJ at 101-02.

[1209] Altman 3/22/94 Fiske GJ at 62.

[1210] Hanson 7/11/94 Treas. IG at 176; Hanson 7/16/94 Senate Banking Comm. Depo. at 359.

[1211] Altman 3/22/94 Fiske GJ at 64; Altman 9/7/95 Int. at 10.

[1212] Altman 9/12/95 GJ at 101; see also Altman 9/7/95 Int. at 11; Altman 3/22/94 Fiske GJ at 64. Benjamin Nye, an assistant to Altman, testified that after the February 2 meeting, Altman told him the White House officials he met with were not inclined toward Altman's

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Guaranty matter, the investigation might not be fairly conducted.[1213] Steiner thought that Altman felt pressured by the White House not to recuse.[1214]

Steiner kept a diary, and for his February 12, 1994 entry,[1215] he recorded that Altman "originally decided to recuse himself but under intense pressure from the White House, he said he would make the final determination based on a recommendation from Ellen Kulka, the GC."[1216] About two weeks later, in a February 27 entry,[1217] Steiner again referred to the February 2 meeting at the White House:

> At a fateful WH mtg w/ Nussbaum, Ickes and Williams, however, the WH staff told RA that it was unacceptable. . . . . They reacted very negatively to the recusal and RA backed down the next day and agreed to a defacto recusal where the RTC would handle this case like any other and RA would have no involvement.[1218]

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recusal and thought his continuing supervision of the case would ensure the RTC staff did a more thorough analysis. Nye 7/24/94 Senate Banking Comm. Depo at 58-62.

[1213] Steiner 7/12/94 Treas. IG at 49.

[1214] Steiner 3/31/94 Fiske GJ at 29-30.

[1215] Steiner Diary (Dec. 12, 1993 through Feb. 27, 1994) (Doc. Nos. 010-DC-00000014 through 15) (typewritten version).

[1216] See id.

[1217] The February 27 entry covered the period February 13 through February 27, 1994. See id.

[1218] See id. (emphases added). Steiner testified Altman did not use the words "intense pressure" when he described his February 2 meeting at the White House. Steiner 8/25/95 GJ at 120. Further, Steiner did not necessarily believe on February 2 that Altman was under "intense pressure." Steiner 3/31/94 Fiske GJ at 36. Steiner claimed the words he used captured his impression at the time he wrote them, ten days after the February 2 White House meeting. Id. When he testified in 1995, Steiner said he would describe Altman as under "pressure" from the White House not to recuse, but not "intense pressure." Steiner 8/25/95 GJ at 120.

In explaining his February 27 entry, Steiner said the word "unacceptable" described only Steiner's own impression from what Altman reported after the White House meeting on February 2. Id. at 129-31. He said he did not believe the word "unacceptable" was accurate and that he used the word often and imprecisely. Id. at 129-31. By the term "White House staff," Steiner said he meant only Nussbaum. Id. Similarly, the word "[t]hey" used later in the February 27 entry referred only to Mr. Nussbaum. Id. at 131. Steiner said he knew of no time when

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Altman denied he was under "intense pressure" not to recuse, and he did not remember telling Steiner he was.[1219] He denied the White House told him a decision to recuse would be "unacceptable."[1220]

14. Roger Altman Phoned McLarty about the February 2 Meeting.

Altman telephoned McLarty to tell him about what happened at the February 2 meeting, because McLarty had not been there.[1221] Altman told McLarty he had discussed the statute of limitations issue and that he was leaning toward recusal.[1222] He told McLarty recusal would make no difference because he would accept Kulka's recommendation anyway.[1223]

McLarty said Altman told him he was weighing the recusal issue.[1224] McLarty said he understood Altman's situation and told Altman that he should do what he thought was right.[1225]

E. Roger Altman Decided Not to Recuse.

1. Roger Altman Told Others That His Decision Not to Recuse Was Influenced by the Reactions at the White House Meeting.

Altman testified he slept on the recusal issue and decided not to recuse himself because 1) he was not required to step aside, 2) he would be following Kulka's recommendation, and 3) he

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Nussbaum told Altman he could not recuse. Id. Steiner said the term "backed down" meant that Altman changed his mind about recusal, a decision Steiner thought was a mistake when he wrote the diary entry Id. at 132.

[1219] Altman 8/25/95 GJ at 120.

[1220] Steiner 8/25/95 GJ at 130-31.

[1221] Altman 9/12/95 GJ at 104-05; McLarty 4/25/95 GJ at 124; McLarty 7/21/94 Senate Banking Comm. Depo. at 77.

[1222] Altman 9/12/95 GJ at 104.

[1223] Altman 3/22/94 Fiske GJ at 77.

[1224] McLarty 4/25/95 GJ at 124.

[1225] Id.

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did not want the White House taking his recusal personally.[1226] Hanson testified that when Altman called her the morning of February 3, he said he had decided against recusal because he would be following his staff's recommendation about Madison Guaranty, and his decision would make the White House staff happy.[1227]

Altman also told Hanson that the White House wanted Kendall told about the legal issues on the statute of limitations.[1228] Altman asked Hanson to have Kulka contact Kendall, which Hanson did that morning.[1229] When Kulka advised it was too early to contact private counsel,[1230] Altman accepted that advice.[1231]

Hanson recalled discussing with Altman the need to get rid of his copy of the talking points prepared for the February 2 White House meeting.[1232] Hanson was concerned the talking points did not reflect what happened in the meeting and would require explanation if produced.[1233]

[1226] Altman 3/22/94 Fiske GJ at 65.

[1227] Hanson 9/29/95 GJ at 102-05; Hanson 4/21/94 Fiske GJ at 70-71; Hanson 7/16/94 Senate Banking Comm. Depo. at 369.

[1228] Hanson 4/21/94 Fiske GJ at 71; Hanson 9/29/95 GJ at 103; Hanson 7/16/94 Senate Banking Comm. Depo. at 369 .

[1229] Hanson 4/21/94 Fiske GJ at 74; Hanson 2/29/95 GJ at 105; Hanson 7/16/94 Senate Banking Comm. Depo. at 369.

[1230] Hanson 4/21/94 Fiske GJ at 75; Hanson 9/29/95 GJ at 105-06; Hanson 7/16/94 Senate Banking Comm. Depo. at 375.

[1231] Hanson 4/21/94 Fiske GJ at 75; Hanson 9/29/95 GJ at 106; Hanson 7/16/94 Senate Banking Comm. Depo. at 375. John "Jack" Ryan, RTC Deputy CEO, testified that Kulka raised this issue with Altman, and Altman told her that approach was fine. Ryan 5/3/95 GJ at 68-69; Ryan 7/14/94 Senate Banking Comm. Depo. at 76.

[1232] Hanson 9/29/95 GJ at 110. Altman did not remember that conversation. Altman 3/22/94 Fiske GJ at 73.

[1233] Hanson 9/29/95 GJ at 110.

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2. Roger Altman Met Again with Secretary Lloyd Bentsen.

Altman and Hanson met again with Secretary Bentsen on February 3, 1994.[1234] Hanson remembered Altman told the Secretary about his meeting with White House officials, and that he had decided not to recuse.[1235] Altman said his decision to stay on the Madison Guaranty matter should not affect the outcome.[1236] Bentsen said Altman probably would face some heat for staying on, but it was a personal decision.[1237]

3. Roger Altman Went to the White House to Tell White House Officials about His Decision.

After meeting with Secretary Bentsen, Altman went to the White House and told various officials he had decided not to recuse. Altman remembered that on the afternoon of February 3, he called Ickes and said he wanted to see him briefly.[1238] There was a health care meeting

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[1234] See Bentsen schedule (Feb. 3, 1994) (Doc. Nos. 060-DC-00004340, 060-DC-00004345) (showed a meeting planned for 11:45 a.m. on February 3 with Altman and Steiner, and in fact taking place at 11:50 a.m. on February 3 with Altman and Hanson); see also Altman calendar (Feb. 3, 1994) (Doc. No. 001-DC-00000487) (showing a meeting scheduled with the Secretary and Hanson for 11:45 a.m. on February 3).

[1235] Hanson 9/29/95 GJ at 108. Altman recalled meeting with Secretary Bentsen to tell him about his recusal decision before a meeting at the White House that same day. Altman 9/12/95 GJ at 106-08. He remembered he might have mentioned Nussbaum was not happy with Altman's initial choice to recuse. Altman 9/12/95 GJ at 108. Bentsen had said the decision was a difficult and personal one. Id.

[1236] Hanson 4/21/94 Fiske GJ at 79-80; Hanson 9/29/95 GJ at 108.

[1237] Hanson 4/21/94 Fiske GJ at 80; Hanson 9/29/95 GJ at 109. Secretary Bentsen did not remember if the meeting happened on February 3. Bentsen 7/26/94 Senate Banking Comm. Depo. at 31-32. He did remember learning that Altman had decided not to recuse, but did not believe he furnished any advice to Altman. See Bentsen 7/26/94 Senate Banking Comm. Depo. at 31-32. Bentsen also said he did not remember learning that Altman had spoken with or planned to speak with the White House about recusal. Bentsen 7/26/94 Senate Banking Comm. Depo. at 30.

[1238] Altman 9/12/95 GJ at 109. Williams recalled Altman called her around noon one or two days after the February 2 meeting. Williams 3/10/94 Fiske GJ at 59-60. He told her he had decided not to recuse and wanted to let other people at the White House know before he went to

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scheduled that evening for 6:00 p.m. in Williams's office, and Altman thought that he may have told Ickes that he wished to talk with him before that meeting.[1239]

Altman testified he went to Williams's office to meet with Ickes and, while standing in the doorway, told him that he would not recuse for the time being.[1240] Ickes might have said something to the effect of "good."[1241] After Altman told Ickes this, Stephanopoulos arrived in Williams's office.[1242] Altman did not remember if Eggleston and Nussbaum were present when he told Ickes he would not recuse, and did not believe that Williams was there.[1243]

Williams did not remember if Eggleston or Nussbaum were there, but recalled that

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another meeting. Williams 3/10/94 Fiske GJ at 59-60; Altman calendar (Feb. 3, 1994) (Doc. No. 001-DC-00000487) (showing that Altman had a meeting on Capitol Hill at 1:15 p.m. on February 3, 1994). Williams thought Altman asked if she could assemble Ickes and Stephanopoulos so he could tell them about his decision. Williams 3/10/94 Fiske GJ at 60. Williams said she agreed to get them together, and then called Ickes and Stephanopoulos to ask them to meet in her office in five minutes. Id.

Ickes first testified in the grand jury that within one or two days of the February 2 meeting, Altman either called him or told him at the White House that he was not going to recuse. Ickes 3/17/94 Fiske GJ at 56-60. In a later grand jury appearance, Ickes remembered meeting with Altman and Williams in her office doorway before a 6:00 p.m. health care meeting at Williams's office. Ickes 9/5/95 GJ at 44. Altman announced he was not going to recuse. Ickes 9/5/95 GJ at 48. Stephanopoulos remembered being in Williams's office before the health care meeting began, and Altman arrived and said he was not recusing. Stephanopoulos 3/22/94 Fiske GJ at 22.

[1239] Altman 9/12/95 GJ at 109. Ickes's phone log for February 3 shows an entry stating, "Roger Altman needs another meeting today." Ickes 9/5/95 GJ at 45; see also Ickes phone log (Feb. 3, 1994) (Doc. No. 006-DC-00000206). Ickes was not sure whether that entry referred to the meeting where Altman announced his recusal decision. Ickes 9/5/95 GJ at 45.

[1240] Altman 9/12/95 GJ at 110-11.

[1241] Id. at 112.

[1242] Id. at 111.

[1243] Id. at 110-11.

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someone from the White House Counsel's office was.[1244] She said Altman then came into her office and announced he had decided not to recuse.[1245] Ickes may have asked if Altman was comfortable with his decision.[1246]

Nussbaum testified at his first grand jury appearance that he remembered running into Ickes or Altman at the White House within a few days after the February 2 White House meeting, and was told that Altman was leaning against recusal.[1247] At a second grand jury appearance, Nussbaum remembered he had this conversation with Altman on February 3, and may have discussed the same matter with Ickes.[1248]

Hanson testified she went to the White House in response to a lunchtime page on February 3, and found Williams, Eggleston, and Ickes in Williams's office.[1249] She was told Altman had just left.[1250] Hanson said Ickes asked her who knew of her recommendation to Altman that he recuse himself.[1251] Hanson replied Benjamin Nye, Treasury Assistant Secretary for Legislative Affairs Michael Levy, and a third person whom she could not remember.[1252] Hanson said Ickes replied that was good, because if her advice became known the situation

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[1244] Williams 6/2/95 GJ at 95; Williams 7/20/94 Senate Banking Comm. Depo. at 95. Eggleston confirmed he was in Williams's office February 3, along with Williams and Ickes, but he did not remember the reason. Eggleston 5/17/94 Fiske GJ at 85. He was not sure whether he knew Altman was coming, but Altman stuck his head into the office and said he was not going to recuse for the time being. Id. at 85-86. Altman then left. Id. at 85.

[1245] Williams 3/10/94 Fiske GJ at 61.

[1246] Id.

[1247] Nussbaum 3/17/94 Fiske GJ at 106.

[1248] Nussbaum 6/13/95 GJ at 78.

[1249] Hanson 9/29/95 GJ at 116.

[1250] Id.

[1251] Id. at 117.

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would not look good given Altman's decision not to recuse.[1253] Hanson told Ickes that she would have recused had she been in a similar position, and Ickes said again that it would be better if the substance of her advice did not get out.[1254] Hanson responded that if asked, she would say what she advised.[1255]

4. Harold Ickes Told the President and Mrs. Clinton about Roger Altman's February 2 Meeting at the White House on the Statute of Limitations and Recusal.

Ickes testified that although he did not remember precisely what he said, he told the President about the statute of limitations and the recusal discussions at the February 2 meeting.[1256] Ickes thought that he may also have told President Clinton about the February 3 meeting with Altman.[1257]

Although not positive, Ickes thought his discussion with the President about the February 2 meeting took place before February 12 -- the date the statute of limitations was extended.[1258]

[1252] Id.

[1253] Hanson 4/21/94 Fiske GJ at 77.

[1254] Id. at 78.

[1255] Id. Ickes testified he saw Hanson at the White House one or two days after the February 2 meeting, but did not remember discussing Altman's recusal. Ickes 3/17/94 Fiske GJ at 61; Ickes 9/5/95 GJ at 47-48. Williams did not remember if anyone else was in her office by the time Hanson arrived. Williams 6/2/95 GJ at 96. She said they did not talk about Madison Guaranty or Altman's recusal decision. Id. Eggleston remembered telling Hanson that Altman had announced he would not recuse. Eggleston 5/17/95 GJ at 86. He also remembered Ickes asking Hanson who else knew she had recommended recusal. Id. Eggleston said Hanson listed names (including Levy, Steiner, and possibly others), and Ickes appeared uncomfortable. Eggleston 3/31/94 Fiske GJ at 73-74.

[1256] Ickes 9/5/95 GJ at 50-52.

[1257] Ickes 3/17/94 Fiske GJ at 89-91; Ickes 9/5/95 GJ at 52-53.

[1258] Ickes 9/5/95 GJ at 51-52. In early February 1994, Congress was considering H.R. 3759, the Emergency Supplemental Appropriations and Rescissions Act, designed to furnish earthquake relief to Southern California. An amendment to the Act extended the statute of

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He also testified he might have told the President the RTC would not have enough time to determine if it had claims it would pursue.[1259] Ickes said he did not discuss with the President whether the President should sign a tolling agreement.[1260] Ickes recalled having a separate but identical conversation with the First Lady, probably before February 12.[1261]

White House lawyers Jane Sherburne and Sheila Cheston met with Ickes's private counsel during the summer of 1994 and took notes about Ickes's communications with President and Mrs. Clinton on Altman's discussions. Sherburne's notes read:

> HI Recalls informing both WJC and HRC (meets w/ them several times/wk) separately that Altman not going to recuse.[1262]

Cheston's notes read:

> Informed HRC + BC individually that RA w/d not recuse self, mtg w/ each [at least] 1/day at this time. Told between 2/3-24.[1263]

The First Lady testified she did not learn about the February 2 meeting until about

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limitations for pursuing the same classes of claims allowed under the RTC Completion Act (claims alleging fraud and certain types of intentional misconduct) until the later of December 31, 1995 or the date on which the RTC terminated, which the President signed into law on February 12, 1994. Emergency Appropriations and Rescissions Act, Pub. L. No. 103-211, 108 Stat. 3 (1994).

[1259] Ickes 9/5/95 GJ at 51.

[1260] Id. at 51-52.

[1261] Id. at 55. During the fall of 1992, Betsy Wright, Chief of Staff to Governor Clinton had told Mrs. Clinton of a report that she had heard that there was a criminal referral involving a savings and loan "that might touch on the Clintons." Senate Whitewater Comm. Hearing, supra note 1043, at 117-21 (Apr. 25, 1996) (testimony of B. Wright).

[1262] Sherburne notes of meeting with Ickes (approx. July 1994) (Doc. Nos. 442-DC-00006538-6539).

[1263] Cheston notes of meeting with Ickes (approx. July 1994) (Doc. No. 442-DC-00006542).

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February 25 – when Altman publicly announced he would recuse.[1264] She denied any discussions with Ickes about the RTC's investigation of Madison Guaranty before February 24, 1994, when Altman testified before the Senate Banking Committee during RTC oversight hearings.[1265] She said she did not remember Ickes briefing her on the three options the RTC had with respect to Madison Guaranty.[1266] She also said she did not remember Ickes speaking with her, before February 24, about Altman's possible recusal.[1267]

The President testified he did not find out that Altman had spoken to White House officials about procedural issues and the RTC's investigation until it was revealed in the press.[1268] He did not learn that Altman had discussed his possible recusal.[1269] The President said he first learned Altman was thinking about recusal when Altman publicly announced he was taking that step.[1270] He did not think he knew before then that Altman had discussed his possible recusal with White House officials.[1271]

5. Jean Hanson and Bernard Nussbaum Discussed Roger Altman's Recusal and the Hiring of Ellen Kulka.

On February 3, 1994, Representative Leach, Ranking Minority Member of the House Banking Committee, sent Altman a letter asking Altman to request a formal ethics opinion on whether he was required to recuse "from any decisions concerning the resolution of Madison

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[1264] See H. Clinton 7/22/95 Depo. at 44-45.

[1265] Id. at 44.

[1266] Id. at 45.

[1267] Id. at 47.

[1268] W. Clinton 6/12/94 Fiske Depo. at 52.

[1269] Id. at 54.

[1270] Id.

[1271] Id. at 56.

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Guaranty."[1272] Altman, still uncomfortable with the issue, requested an opinion from the RTC and Department of Treasury ethics officers.[1273]

Nussbaum testified Hanson unsuccessfully tried to reach him by phone on the morning of February 3.[1274] At 5:51 p.m. that evening, Hanson faxed Nussbaum a copy of Leach's letter, and the two spoke about it on the phone shortly after.[1275] Hanson said the Treasury Department would prepare a response to Leach's letter and continue to research the ethics issue.[1276] Nussbaum suggested that if they needed help, they could ask Associate White House Counsel Beth Nolan, a former ethics professor.[1277] Hanson said she would consider that idea.[1278]

The RTC ethics officer eventually produced an opinion (after consultation with the Office

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[1272] Letter from Rep. James Leach, Ranking Minority Member of the House Banking Committee to Roger Altman, Interim CEO of the RTC at 2 (Feb. 3, 1994) (Doc. No. 009-DC-00000053). Leach charged it was "structurally unseemly for a political appointee of an Executive branch department to make what are in effect, law enforcement decisions for an independent federal agency as they may touch upon the President." Id.

[1273] Altman 3/22/94 Fiske GJ at 75-76.

[1274] Nussbaum 3/17/94 Fiske GJ at 95-96; see also Nussbaum phone log (Feb. 3, 1994) (Doc. No. 009-DC-00000072) (showing call from Hanson at 11:05 a.m.). Hanson testified she spoke on the phone with Nussbaum on February 3, 1994. Hanson 9/29/95 GJ at 106. She did not remember faxing Leach's letter to Nussbaum discussing the letter with him; she vaguely remembered Nussbaum suggesting that the Treasury Ethics Officer (Dennis Foreman) consult Nolan about the ethics issue. Hanson 4/21/95 GJ at 88-89. She was not sure if this phone conversation took place before or after her February 3 trip to the White House. Hanson 9/29/95 GJ at 107. Hanson said during this phone call, Nussbaum once again asked how Kulka was hired. Id. at 106; Hanson 4/21/95 at 86. Foreman did tell Nolan about ethics issues related to Altman's possible recusal. Foreman 4/20/94 Fiske Int. at 3; Foreman 7/12/94 Senate Banking Comm. Depo. at 135-37.

[1275] See Facsimile from Jean Hanson, General Counsel for Treasury Department, then General Counsel for the RTC to Bernie Nussbaum, White House Counsel (Feb. 3, 1994) (Doc. No. 009-DC-00000051); Nussbaum 3/17/94 Fiske GJ at 96-97.

[1276] Nussbaum 3/17/94 Fiske GJ at 97.

[1277] Id. at 98.

[1278] Id. at 98-100.

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of Government Ethics, Hanson, Foreman, Altman, and others at Department of Treasury and the RTC) concluding that friendship did not require recusal, but that Altman would still need to consider whether his friendship with the Clintons should lead to discretionary recusal.[1279]

6. Jean Hanson and Bernard Nussbaum Discussed Independent Counsel Fiske's Jurisdictional Charter.

Hanson testified that on February 4, 1994, Nussbaum called and told her that Fiske's jurisdictional grant included civil as well as criminal jurisdiction.[1280] He suggested Altman might wish to consider whether the RTC's civil investigation of Madison Guaranty was included in Fiske's jurisdiction.[1281] Hanson immediately obtained a copy of Fiske's grant, and then discussed it with Altman that same day.[1282] Hanson said on Saturday, February 5, 1994, she called Kulka, and the two discussed the Fiske charter.[1283] Kulka reported she had previously spoken with Fiske and thought he was not interested in taking over the RTC's civil investigation.[1284]

[1279] Memo from Dennis I. Foreman, Deputy General Counsel and Designated Agency Ethics Officer to Roger Altman, Deputy Secretary (Feb. 23, 1994).

[1280] Hanson 7/16/94 Senate Banking Comm. Depo. at 414-15.

[1281] Id. at 415.

[1282] Id. Nussbaum remembered a discussion with Hanson in which he mentioned Fiske's charter and suggested Hanson review it because it encompassed civil jurisdiction. Nussbaum 3/17/94 Fiske GJ at 97-100. In earlier testimony, Nussbaum appeared to state that this call happened shortly after the February 3 telephone call. Id. at 95-96. In later testimony, Nussbaum said the Fiske-related discussion was part of the February 3 telephone call. Nussbaum 6/13/95 GJ at 67-70. He suggested transferring the RTC's civil investigation to Special Counsel Fiske might provide a solution to Altman's recusal issue. Nussbaum 3/17/94 Fiske GJ at 99-100. Hanson said she would consider that. Id. at 100.

[1283] Hanson 7/16/94 Senate Banking Comm. Depo. at 420-21.

[1284] Id. at 421. Kulka testified Hanson called her and asked if the RTC's civil investigation could be given to Fiske. Kulka 5/5/95 GJ at 36-37. In light of the RTC's independent authority to pursue the civil claims, Kulka questioned the Attorney General's authority to cede it to Fiske. Id. at 36. Further, Kulka mentioned that from a prior discussion she had with Fiske, she concluded he did not want the RTC's jurisdiction over Madison Guaranty.

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7. Joshua Steiner Met with George Stephanopoulos about Roger Altman's Recusal Decision.

Steiner remembered that on February 16, 1994, he visited Stephanopoulos at the White House to talk about recusal.[1285] Steiner told Stephanopoulos he favored recusal.[1286] Stephanopoulos agreed and offered to speak with other White House officials to determine their opinion.[1287] Steiner declined, concerned Altman might not want to revisit the issue.[1288] Steiner recalled speaking with Altman about this conversation with Stephanopoulos, and Altman said he did not want to revisit the issue then.[1289]

8. The Alleged Third Meeting with Secretary Bentsen about Recusal.

There was evidence that Altman and Hanson met a third time about Altman's recusal with Secretary Bentsen and Ed Knight, the Secretary's senior advisor.[1290] Hanson testified that at the meeting, Secretary Bentsen said he wanted Knight to remain,[1291] and Altman reviewed the first

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Id. at 36-37. Kulka also testified that if Fiske assumed the RTC's jurisdiction, he would have difficulty evaluating potential civil claims by February 28. Id. at 37.

[1285] Steiner 7/18/94 Senate Banking Comm. Depo. at 171; Steiner 8/24/95 Int. at 11

[1286] Steiner 7/18/94 Senate Banking Comm. Depo. at 172.

[1287] Id.

[1288] Id.

[1289] Id. Altman said he did not remember Steiner telling him of a February 16 meeting he had with Stephanopoulos. Altman 9/12/95 GJ at 119. Stephanopoulos did not remember this meeting with Steiner but assumed it must have happened. Stephanopoulos 9/8/95 GJ at 33-36. He testified he thought Altman should just recuse himself. Id. at 34.

[1290] Hanson 4/21/94 Fiske GJ at 81.

[1291] Id. at 70-81; Hanson 9/29/95 GJ at 111. Knight remembered only one discussion about Altman's possible recusal, and thought it took place in a meeting with Altman, Hanson and Secretary Bentsen on February 23, the day before Altman testified before the Senate Banking Committee. Knight 6/5/95 Int. at 7-11. Each of the participants' respective calendars shows a meeting on February 23 at 10:00 a.m; see Knight calendar (Feb. 21-23, 1994) (Doc. No. 274-DC-00002117) (showing "Whitewater Mtg."); see Bentsen Calendar (Feb. 23, 1994) (Doc. No. 060-DC-00004341) (showing RTC testimony briefing); see Altman monthly calendar (Feb. 1994)

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meeting, saying that he had described the statute of limitations issue, mentioned he was reserving judgment on his recusal, and intended to talk to the White House.[1292] Altman said that in their second meeting, he told Secretary Bentsen that after he had spoken with the White House he had decided not to recuse.[1293]

Hanson also testified that after the meeting she remained with the Secretary, and Bentsen said, "That is not quite the way I recalled it."[1294] Hanson told him she did not think it mattered.[1295] She understood the Secretary to mean that he remembered Altman had decided in their first meeting that he was going to recuse, not that he was reserving judgment on the issue.[1296]

(Doc. No. 001-DC-00000487) (showing a testimony briefing); see Hanson schedule card (Feb. 23, 1994) (Doc. No. 007-DC-00000141) (showing "RTC meeting w/Altman, et al"). In the discussion, Altman mentioned he had discussed the issue with Bentsen earlier. Knight 6/5/95 Int. at 8. Bentsen stopped Altman, pointed a finger at him, and said he had told Altman that it was Altman's decision to make. Id. Knight testified there was no mention at this meeting of any meetings that had taken place at the White House. Id. at 9.

[1292] Hanson 4/21/94 Fiske GJ at 81; Hanson 9/29/95 GJ at 112.

[1293] Hanson 4/21/94 Fiske GJ at 81-82. In her second grand jury appearance, Hanson testified for the first time that in this meeting with Secretary Bentsen, Altman said he had told the White House that he decided not to recuse. Hanson 9/29/95 GJ at 112. Altman did not remember the Secretary cutting him off on the recusal issue in any meeting, although he said it could have happened. Altman 9/12/95 GJ at 147. Based on his review of a memorandum mentioning a discussion he had with Bentsen about recusal, Altman also thought that he may have discussed recusal with Secretary Bentsen shortly before the February 24 hearing. Altman 9/7/95 Int. at 21; see Memo from Josh Steiner, then Department of Treasury Chief of Staff to Roger Altman, then Interim CEO of the RTC (Mar. 4, 1994) (Doc. No. 007-DC-00003315); Altman 9/7/95 Int. at 21.

[1294] Hanson 4/21/94 Fiske GJ at 84; Hanson 9/29/95 GJ at 115. Bentsen did not remember this third meeting. Bentsen 7/12/95 Int. at 11-12; Bentsen 7/26/94 Senate Banking Comm. Depo. at 46-47. He generally remembered saying something to Hanson in February or March of 1994 about Altman remembering something differently from the way Bentsen remembered it. Bentsen 7/12/95 Int. at 12. He did not know if his remark to Hanson referred to Altman's recusal issue. Id.

[1295] Hanson 9/29/95 GJ at 115; Hanson 4/21/94 GJ at 84.

[1296] Hanson 4/21/94 Fiske GJ at 84; Hanson 9/29/95 GJ at 115.

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9. Jean Hanson and Ellen Kulka Discussed Roger Altman's Failure to Recuse.

Around February 3, Hanson and Kulka were walking together at the Department of Treasury when Kulka asked why Altman would not recuse himself.[1297] Hanson responded: "Think about it."[1298] Hanson testified that by saying that she meant that if Kulka thought about it, she would realize that Altman would not recuse because the White House had asked him not to do so.[1299]

Kulka testified she responded to Hanson's statement by asking, "Because that's what the White House wants him to do?"[1300] Kulka said Hanson said nothing in response, which Kulka understood to be confirmation of her statement.[1301] Kulka testified she did not mean that the White House was pressuring Altman not to recuse, just that Altman might feel the need to remain on the case out of loyalty to the White House.[1302]

10. The Statute of Limitations on Certain RTC Civil Claims Were Extended.

Sometime around February 12, 1994, the statute of limitations on certain RTC civil claims was extended until at least December 31, 1995.[1303] The RTC was given significantly more time to finish its investigation and analysis of potential civil claims arising from Madison Guaranty's failure. Given this development, it was evident that Altman would not have to make

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[1297] Hanson 9/29/95 GJ at 120.

[1298] Id.

[1299] Id.

[1300] Kulka 6/2/94 Fiske GJ at 55-57.

[1301] Id. at 57.

[1302] Kulka 5/5/95 GJ at 52. Ryan testified Kulka recounted her conversation with Hanson to him. Ryan 5/3/95 GJ at 51.

[1303] Emergency Appropriations and Rescissions Act, Pub. L. No. 103-211, 108 Stat. 3 (1994).

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decisions on any Madison Guaranty matter before his Vacancy Act appointment as CEO of the RTC expired at the end of March 1994.[1304]

11. The Media Asked about the February 2, 1994 White House Meeting.

In February 1994, a Department of Treasury press officer received calls from a television news producer who claimed to have information that Altman had briefed the White House on certain Madison Guaranty matters.[1305] Over time, this caller said he knew Altman had met at the White House on February 2, 1994 and briefed White House personnel on the statute of limitations issue.[1306] The caller also alleged the White House had asked Altman to arrange for a similar briefing for the Clintons' private counsel.[1307] These calls resulted in a number of meetings involving Altman, Hanson, and Treasury press officials Howard Schloss and Michelle Andrews-Smith, to decide how to respond.[1308]

At these meetings, Altman confirmed the meeting at the White House had taken place to discuss the statute of limitations issue.[1309] Altman also confirmed he was asked if Kendall could get the same briefing, and he had asked Hanson to call Kulka on that point.[1310] Kulka had responded it would not then be appropriate for a briefing of private counsel.[1311] Although neither

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[1304] See Altman 7/11/94 Treas. I G at 6-7; Altman 5/13/94 Statement to the Office of the Independent Counsel at 6-7, 11.

[1305] Michelle Andrews-Smith 7/6/95 Int. at 4; Schloss 6/14/95 Int. at 2-3; Schloss 6/27/95 GJ at 9.

[1306] Andrew-Smith 7/6/95 Int. at 4-5; Schloss 6/14/95 Int. at 3.

[1307] Andrews-Smith 7/6/95 Int. at 5; Schloss 6/27/95 GJ at 10-11.

[1308] Andrews-Smith 7/6/95 Int. at 4; Schloss 6/14/95 Int. at 2-3; Schloss 6/27/95 GJ at 13.

[1309] Schloss 6/27/95 GJ at 12; Andrews-Smith 7/6/95 Int. at 4.

[1310] Schloss 6/27/95 GJ at 12; Andrews-Smith 7/6/95 Int. at 5.

[1311] Schloss 6/27/95 GJ at 12.

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Altman nor Hanson appeared defensive, both expressed concern about how the earlier meeting would be perceived by the public.[1312] Both said the earlier meeting was informational only, involving the same information that already was given to Congress.[1313] Neither claimed Secretary Bentsen knew of the White House meeting or had approved it.[1314] Altman did not mention that his recusal was also an issue that was discussed at the February 2 meeting.[1315]

Andrews-Smith confirmed the story to the news organization.[1316] The story was not published, reportedly because the news organization wanted to get Altman on camera answering questions about the February 2 meeting.[1317] Altman would not be interviewed, so Schloss thought it likely the news organization would prepare one of the Senators who would be sitting at the February 24 Banking Committee hearings to question Altman on his White House contacts.[1318] Schloss told Altman that he should be prepared to answer such questions.[1319]

Schloss alerted Ginny Terzano, one of his counterparts at the White House, about the news organizations' calls, and that the Department of Treasury planned to confirm that a meeting

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[1312] Andrews-Smith 7/6/95 Int. at 6; Schloss 6/14/95 Int. at 5; Schloss 6/27/95 GJ at 13, 15, 20.

[1313] Andrews-Smith 7/6/95 Int. at 6; Schloss 6/14/95 Int. at 4; Schloss 6/27/95 GJ at 13, 15, 20.

[1314] Andrews-Smith 7/6/95 Int. at 9.

[1315] When the press later reported Altman's possible recusal was discussed at the February 2 White House meeting, Altman told Schloss it had taken place at the end of the meeting and had not been the purpose of the meeting. Schloss 6/27/95 GJ at 18-19.

[1316] Schloss 6/14/95 Int. at 3; Schloss 6/27/95 GJ at 13.

[1317] Schloss 6/14/95 Int. at 5; Schloss 6/27/95 GJ at 21.

[1318] Schloss 6/27/95 GJ at 21-22.

[1319] Id. at 21.

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at the White House took place to discuss the statute of limitations issue.[1320] The Department of Treasury also planned to confirm that Altman was asked to determine if Kendall could get the same briefing.[1321]

A note to Lindsey over Terzano's name reported that the Department of Treasury had confirmed Altman checked with Kulka to see if the RTC would brief private counsel on the statute of limitations issue.[1322] The memorandum also indicated the Department of Treasury was seeking White House guidance on how to respond to a question whether the White House had asked Altman to pressure Kulka to give the briefing.[1323]

After receiving the memorandum on February 3 or 4, Lindsey called Altman.[1324] Altman described the meeting, telling Lindsey that his possible recusal had been discussed, as well as procedure the RTC would follow through February 28, 1994.[1325] Altman also related that Williams asked him if private attorneys (the Clintons' private counsel was not singled out) would receive a statute of limitations briefing.[1326] Altman told Lindsey that Kulka told him that private counsel would be briefed, but not then.[1327] Altman denied anyone at the White House told him to brief Kendall.[1328]

Lindsey told Altman to tell the press that the White House did not instruct him to do

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[1320] Schloss 6/14/95 Int. at 6; Schloss 6/27/95 GJ at 23-24.

[1321] Schloss 6/27/95 GJ at 24.

[1322] Terzano 8/15/95 Int. at (2-3 with attached memo).

[1323] Id.

[1324] Lindsey 3/24/94 Fiske GJ at 79.

[1325] Id. at 79.

[1326] Id. at 79-80.

[1327] Id. at 80.

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anything;[1329] that the White House asked him if he would be reviewing the same procedures with private counsel; that Altman checked with the RTC's General Counsel, and that a decision was made to defer the private counsel briefing until later.[1330] Altman agreed to follow Lindsey's advice.[1331]

12. Roger Altman Prepared for the February 24, 1994 Hearing.

Altman and Secretary Bentsen prepared to testify at the Senate Banking Committee's semi-annual oversight hearings on the RTC Thrift Depositor Protection Oversight Board scheduled for February 24, 1994. In the weeks before the hearings, RTC and Treasury staff created briefing books containing the types of questions that might be asked at the hearings with proposed answers.[1332] Altman said Ryan and Kulka were responsible for the formulation of questions and answers ("Q&As"), though various RTC persons were consulted.[1333]

Altman said he approved the wording of every answer as it appeared in his final briefing book.[1334] His preparation involved a number of long meetings with eight to ten senior RTC and Treasury staff members, where Altman reviewed the draft Q&As, and edited the responses.[1335]

[1328] Id.

[1329] Id. at 80-81. Altman remembered Lindsey called him and explained the discussions at the February 2 meeting for Lindsey. Altman 9/12/95 GJ at 114; Altman 9/7/95 Int. at 14. It was decided one of them would speak to the news organization, but Altman did not remember who actually did so. Altman 9/12/95 GJ at 114; Altman 9/7/95 Int. at 14.

[1330] Lindsey 3/24/94 Fiske GJ at 80-81.

[1331] Id. at 81.

[1332] Altman 3/22/94 Fiske GJ at 79-80; Altman 9/7/95 Int. at 15-16; Altman 3/15/94 Fiske Int. at 6; Hanson 4/21/94 Fiske GJ at 96-99; Gross 6/21/95 Int. at 13; Nye 6/23/95 GJ at 60-61.

[1333] Altman 6/1/94 Fiske Int. at 2.

[1334] Altman 9/12/95 GJ at 127; Altman 9/7/95 Int. at 18.

[1335] See Altman 9/12/95 GJ at 125-26; Altman 9/7/95 Int. at 18.

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At a meeting two evenings before the hearing, Hanson read questions aloud, and Altman read through the prepared responses, editing them as they went.[1336]

The Q&As on Madison Guaranty-related issues were prepared at the highest levels of the RTC and the Department of the Treasury, and circulation was carefully limited until the final briefing books were prepared the evening of February 23.[1337] Hanson prepared and edited the most politically sensitive Q&As on Madison Guaranty, with substantial help by Kulka.[1338] Secretary Bentsen, his immediate staff, and the Oversight Board staff were not involved in preparing the draft Madison Guaranty Q&As.[1339]

Whether because it appeared logical that the Committee might ask about contacts, or because Altman and Hanson knew the existence of the February 2 meeting had leaked, they devoted considerable attention to preparing a Q&A on contacts with the White House. As early as February 10, 1994, Peter Knight prepared a list of possible questions for Altman on Madison Guaranty, including the question, "Secretary Altman, have you or any other Treasury officials held any conversations with the White House concerning this matter?"[1340] Knight said he thought this would be a logical question for some senator to ask, but assumed the answer would be "No."[1341]

Hanson said Altman told her he would prepare a draft answer to a question about contacts

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[1336] Hanson 4/21/94 Fiske GJ at 104-05; Altman 3/18/94 Fiske Int. at 9.

[1337] Altman 9/12/95 GJ at 125-26.

[1338] Id. at 127-28.

[1339] Id. at 125-26.

[1340] Knight 6/22/95 Int. at 2-3; see also Possible Questions for the Oversight Board Hearing (Feb. 10, 1994) (Doc. No. 007-DC-00002138).

[1341] Knight 6/22/95 Int. at 3.

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with the White House, and she should prepare her own draft, which they would exchange.[1342]

Hanson's draft said:[1343]

> Q. Mr. Altman, have you or any of the Treasury officials held any conversation with the White House concerning this matter?
>
> A. I have had one meeting with White House staff on this matter. Jean Hanson, General Counsel of the Treasury, and I met earlier this month with Bernard Nussbaum, White House Counsel, one of his assistants, [Mack McLarty], Harold Ickes, and Margaret Williams.
>
> The purpose of the meeting was to describe the procedural reasons for the then impending February 28 deadline. That was: due to the enactment of the Completion Act, the statute of limitations was retroactively reinstated for certain types of civil claims (those relating to fraud and certain claims relating to intentional misconduct); the extended statute of limitations, as it related to Madison Guaranty, would expire the end of February; and the RTC was in the process of determining whether any claims existed under the extended statute of limitations. Finally, if it were determined that any such claims existed, the RTC would have to determine whether to seek a tolling agreement or commence litigation.
>
> I told them that it was my understanding that the RTC's review was ongoing and that, as far as I was aware, the RTC had reached no conclusions. I also told them that any decision would be made with complete impartiality [and that I fully expected to follow the recommendation of the RTC General Counsel on these matters].
>
> It was agreed that any discussions by the RTC on matters that might in any way affect the President or Mrs. Clinton should take place with David Kendall, and not with White House staff.
>
> . . . .
>
> Q. Mr. Altman, why did you meet with White House staff on the Madison Guaranty matter?
>
> A. Solely to ensure that they understood the legal, procedural framework

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[1342] Hanson 9/29/95 GJ at 121.

[1343] Hanson's very first draft of this answer was produced to this Office with her handwritten stylistic edits written on it. See Q&A on Madison/Whitewater: Conversations with the White House (approx. Feb. 1994) (Doc. No. 007-DC-00000620).

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> within which the RTC was working. (If you recall, at that time the February 28 date was the subject of major attention in the Congress and the press.) It is not uncommon for meetings of this type to take place. The meeting could have taken place between the lawyers, this was simply a legal briefing with a larger audience.[1344]

Hanson testified that she intentionally omitted any description of the recusal discussion at the February 2 meeting because she wanted to see what Altman was going to say.[1345] Hanson also left blank a follow-up question on whether Altman had further discussions with the White House, because she had not been present at Altman's February 3 meeting and had not discussed it with him.[1346]

Although Altman did not remember drafting a contacts answer or exchanging drafts with Hanson, he did testify that one particular draft reflected his style of writing so he must have had a large amount of input into that draft.[1347] It said in relevant part:

> What Conversations Have You Had with the White House on this Matter?
>
> I've had one substantive conversation. Approximately three weeks ago, Jean Hanson (Treasury General Counsel) and I requested a meeting with Nussbaum, White House Counsel. At that time, the statute of limitations on matters like this was set to expire on February 28.
>
> We advised Nussbaum that the RTC would be reaching a decision on this matter before that date. That there were only two decisions which could be reached: (1) finding that there existed a basis for a civil claim which lead either to a tolling agreement between the RTC and the parties at interest or to the RTC's filing a claim in court. Alternatively, the RTC could conclude that there was not a sufficient basis for a claim and permit the statute of limitations to lapse.

[1344] See Q&A on Madison/Whitewater: Conversations with the White House (approx. Feb. 1994) (Doc. No. 274-DC-00002604) (emphasis in original).

[1345] Hanson 9/29/95 GJ at 122; Hanson 3/18/94 Fiske Int. at 8.

[1346] Hanson 9/29/95 GJ at 123; Altman 4/21/94 Fiske GJ at 106-07.

[1347] Altman 9/12/95 GJ at 130; see also Q&A for What Conversations have you had with the White House on this matter? (approx. Feb 10, 1994) (Doc. No. 274-DC-00002610).

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We made clear that we had no idea at all what decision would be reached. I did say, however, that if I received a clear recommendation from the RTC's chief legal officer, I would follow it. I also said that I was reserving judgment on a recusal.

We were only asked one question. Did we intend to provide the same briefing on the RTC's processes to attorneys for the parties at interest. I said that I assumed so but would check with the RTC General Counsel.

Jean Hanson did check and was told "in due course" I said "fine".

Why did you brief the White House on those processes?

We wanted them to know that we would handle this on a strictly professional arms length basis. Just like the October decision on referring the Madison matter to Justice.

Why did you judge it wise to brief them?

It was intended as a warning to the effect that anything could happen.

Who else attended the meeting?

Ickes, Williams and Mrs. [sic] Nussbaum's deputy.

Were there any other conversations at all[?]

The only other discussion -- which lasted about five minutes -- occurred later when *I* indicated that I was not inclined towards a recusal.[1348]

Hanson testified she and Altman exchanged their drafts, and that she received comments back on her draft from Altman.[1349] She remembered discussing the drafts with Altman at that point, telling him that she had already used his draft as the basis for the answer with some changes.[1350] Hanson testified she did not remember any additional discussion about the wording

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[1348] See Q&A for "What conversations have you had with the White House on this matter?" (approx. Feb 10, 1994) (Doc. No. 274-DC-00002610-2611) (underlining in original) (handwritten original edits in italics).

[1349] Hanson 9/29/95 GJ at 121-25.

[1350] Id. at 124.

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of the contacts answer; she thought all editing of this answer was done by circulation of written drafts.[1351]

Hanson said she kept most of what Altman had provided in his original draft in formulating the final version of this Q&A.[1352] The most substantial change she made was to substitute her second paragraph (about the statute of limitations discussion at the February 2 meeting) for Altman's second paragraph on the same issue.[1353] This modified Altman draft of the Q&A remained unchanged until the last minute, when the response was changed from stating, "I've had one substantive conversation" (with a follow-up answer describing the February 3 meeting), to "I've had one brief meeting and one incidental conversation."[1354]

Altman identified the final version of the Q&As that he used at the hearing on February 24.[1355] The final contacts Q&A said:

> Question:
>
> What conversations/contacts have you had with The White House on this matter?
>
> Answer:
>
> I've had one brief meeting and one incidental conversation. Approximately three weeks ago, Jean Hanson (Treasury General Counsel) and I requested a meeting with Nussbaum, White House Counsel.

[1351] Id. at 129-31.

[1352] Id. at 125.

[1353] Id. In addition, it appears that Hanson substituted her paragraph about the purpose of the procedural briefing for Altman's. Hanson identified the draft Q&A that is Altman's Q&A modified that way. See Q&A for "What conversations have you had with the White House on this matter?" (Mar. 10, 1994) (Doc. No. 007-DC-00000426).

[1354] See Q&A for "What conversations/contacts have you had with the White House on this matter." (Feb. 24, 1994) (Doc. No. 274-DC-00002529).

[1355] See id.

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The purpose of the meeting was to describe the procedural reasons for the then impending February 28 deadline: Due to the Completion Act, the statute of limitations was retroactively reinstated for certain types of civil claims (those relating to fraud and certain claims relating to intentional misconduct); as it related to Madison Guaranty, it would expire the end of February. Finally, if the RTC were to determine that any such claims existed, the RTC would have to determine whether to seek a tolling agreement or commence litigation.

We made clear that we had no idea at all what decision would be reached. I did say, however, that if I received a clear recommendation from the RTC's chief legal officer, I would follow it. I also said that I was reserving judgment on a recusal.

We were only asked one question. Did the RTC intend to provide the same briefing on the RTC's processes to attorneys for the parties in interest. I said that I assumed so but would check with the RTC General Counsel.

Jean Hanson did check and was told "in due course." I said "fine."

Question:

Why did you brief the White House on those processes?

Answer:

Solely to ensure that they understood the legal, procedural framework within which the RTC was working. (If you recall, at that time the February 28 date was the subject of major attention in the Congress and the press.) It is not uncommon for meetings of this type to take place. The meeting could have taken place between the lawyers; this was simply a legal briefing with a larger audience.

Question:

Who else attended that meeting?

Answer:

Mr. Ickes, Ms. Williams and one of Mr. Nussbaum's assistants.

Question:

Were there any other conversations at all?

Answer:

The only other discussion -- which lasted about five minutes -- occurred later

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when I indicated that I was not inclined towards a recusal.[1356]

Contrary to Hanson's testimony, Altman thought that the issue of contacts came up in one of the earlier preparation sessions (not the last session on February 23) in his office, that he provided information about the content of the contacts, and that others drafted his response.[1357] Altman said the answer on contacts was "very, very carefully prepared" because he thought the February 2 meeting could be misinterpreted.[1358] He knew there were draft materials on that Q&A circulated before the hearing, and he thought Hanson may well have been the individual who drafted the answer.[1359]

According to Kulka, Altman said he had discussed procedural aspects of the case with the White House, and that the statute of limitations would run soon.[1360] He told the White House

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[1356] See Table of Contents for the Q&A's (approx. Mar. 1994) (Doc. No. 274-DC-00002520 and 274-DC-00002529-30) (emphasis in original).

[1357] Altman 3/22/94 Fiske GJ at 80-81. Like Altman, Kulka testified the issue of contacts with the White House first came up in one of the preparation sessions with Altman. Kulka 6/2/94 Fiske GJ at 19. She and others asked Altman possible difficult questions he might encounter at the hearing. Kulka 6/2/94 Fiske GJ at 19; Kulka 5/5/95 GJ at 69. Ryan asked if Altman had ever spoken with anyone in the White House about Madison Guaranty. Kulka 6/2/94 Fiske GJ at 19-20; Kulka 5/5/95 GJ at 76. Kulka thought Altman or Hanson may have provided a draft of a written response to that question (or an oral briefing about what happened for someone else to use as the basis for drafting a written response), and that was when she first learned the substance of the February 2 meeting. Id. at 72-74.

[1358] Altman 3/22/94 Fiske GJ at 81.

[1359] Altman 9/12/95 GJ at 128-29.

[1360] Kulka 5/5/95 GJ at 78. Ryan testified that in one of the late night preparation sessions in Altman's office (he believes the last one) a day or two before the hearing, Altman asked everyone to ask him tough questions that might come up at the hearing. Ryan 5/3/95 GJ at 30. Ryan said someone (possibly Ryan himself) asked Altman if he had ever talked to the White House about Madison Guaranty. Id. Altman said he had had one meeting at the White House where procedural aspects of what the RTC was doing were discussed. Id. at 32.

Ryan remembered some discussion about the need to ensure that the contacts Q&A made clear that the February 2 meeting was purely a procedural discussion, not a discussion about any

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officials that the RTC would have to make decisions about bringing actions and perhaps seek tolling agreements so that suits did not need to be filed by February 28.[1361]

Ryan posed a possible follow-up question about whether the meeting was appropriate, and Altman replied the meeting was not substantive, merely procedural.[1362] Altman admitted he frequently used the word "substantive" to relate to the case, meaning the "substance" or "essence" of the case, and that this descriptive term undoubtedly came from him.[1363]

Kulka testified that as the Q&A was being edited, she became concerned Altman was describing the February 2 meeting as being only about "procedures."[1364] Altman understood her concerns and thought it was fair to call the meeting "substantive."[1365] Kulka did not believe the word "substantive" was meant to exclude any particular additional contacts from disclosure.[1366] Kulka also testified the word "substantive" was intended to encompass both the statute of limitations discussion and the recusal discussion.[1367] Altman denied discussing the need to avoid

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of the facts of the case. Id. at 29, 34. He did not remember learning that Altman's recusal had also been discussed at the February 2 meeting. Id. at 38.

[1361] Kulka 6/2/94 Fiske GJ at 20-21.

[1362] Ryan 5/3/95 GJ at 33-34.

[1363] Altman 9/12/95 GJ at 138-39.

[1364] Kulka 5/5/95 GJ at 78-79; Kulka 7/19/94 Senate Banking Comm. Depo. at 156-57. She testified that although the meeting included a discussion about the statute of limitations and tolling agreements, "procedural" issues in a legal sense, discussion of those issues might appear to others to be significant because they were serious issues. Kulka 5/5/95 GJ at 78-79; Kulka 7/19/94 Senate Banking Comm. Depo. at 156-57.

[1365] Kulka 5/5/95 GJ at 79. Barker remembered raising concerns about the term "substantive" in a Q&A preparation session, but Altman was apparently not present for this meeting. Barker 5/2/95 GJ at 73, 78. His concern was the word "substantive" was sufficiently ambiguous that it invited further questioning about contacts. Id. at 81-82. Barker testified the others at the meeting, including Gross and Hanson, did not share his concern. Id. at 82, 84.

[1366] Kulka 5/5/95 GJ at 79-80; Kulka 7/19/94 Senate Banking Comm. Depo. at 158.

[1367] Kulka 5/5/95 GJ at 79-80.

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the modifier "substantive" so as not to exclude disclosure of other types of contacts.[1368]

Gross was the only witness able to provide some understanding about the last minute change to the descriptions of the February 2 and 3 meetings in Altman's contacts Q&A. She said she and Nye stayed all night February 23 at the RTC building putting together Altman's final briefing books.[1369] Sometime during that process, the two discussed the answer to the contacts question.[1370] Gross, a lawyer, objected to using "substantive" to describe what was characterized as a procedural meeting.[1371] She thought it incongruous to say a meeting about procedures was substantive.[1372] She thought they might have consulted a dictionary.[1373] Gross felt it was more accurate to change "one substantive conversation" to "one brief meeting and one incidental conversation."[1374] Gross said she and Nye authored this change in the early hours of February 24.[1375] Gross did not point out the change to anyone when she delivered the finished briefing books to the Department of Treasury.[1376]

As for recusal, the final, revised Q&A said: "I also said that I was reserving judgment on a recusal."[1377] Hanson testified that she took this from Altman's draft where he said he told the

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[1368] Altman 9/12/95 GJ at 137-39. Hanson claimed not to remember any discussions about whether it would be correct to use the word "substantive" to refer to a meeting supposedly about "procedures." Hanson 9/29/95 GJ at 126.

[1369] Gross 6/21/95 Int. at 13.

[1370] Id.

[1371] Id.

[1372] Id.

[1373] Id.

[1374] Id.

[1375] Id. Nye did not remember this incident. Nye 6/25/95 GJ at 61.

[1376] Gross 6/21/95 Int. at 13.

[1377] See Final Q&As (Mar. 1994) (Doc. Nos. 007-DC-000000184 through 234).

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White House he "was reserving judgment on a recusal."[1378] Hanson thought this description accurately presented the end result of Altman's recusal discussion and would elicit questions sufficient to bring out details of the entire conversation.[1379]

The Madison Guaranty Q&As also addressed conversations Altman had had with Secretary Bentsen about Madison Guaranty.[1380] The early drafts said Altman had no "substantive discussions" about Madison Guaranty with Secretary Bentsen,[1381] though the draft answer did say Altman had told the Secretary about the general process the RTC was following with Madison Guaranty in light of the statute of limitations deadline.[1382] A modified answer was later prepared.[1383] Late in the evening on February 23, Hanson faxed a modified answer with her own handwritten additions to the RTC.[1384] The modified draft said:

> I have had three brief discussions with Secretary Bentsen on matters relating to Madison.
>
> I alerted him that there was a possibility of criminal referrals being made in later September.
>
> In early February I described to him the process that the RTC was undertaking in connection with its review of Madison in light of the then impending February 28 deadline, and that I had received Congressional inquiries on whether I would recuse myself from the matter.
>
> I told him that I was reserving judgment on the recusal.

[1378] Hanson 9/29/95 GJ at 127.

[1379] Id.

[1380] Final Q&A's (Mar. 1994) (Doc. Nos. 007-DC-000000184 through 234).

[1381] See id.

[1382] See id.

[1383] See Q&A for "I have had 3 brief discussions with Secretary Bentsen on matters relating to Madison" (Feb. 23, 1994) (Doc. No. 004-DC-00000337).

[1384] See id.

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Somewhat later I told him that I was not inclined toward a recusal.

Why did you have those conversations?

To give him a "heads up" so that he would not be caught by surprise if he were to receive inquiries on these matters as Chairman of the Oversight Board.

Question:

What has he said to you about the Madison investigation?

Answer:

Nothing.

Question:

Do you mean that he said nothing during your conversations?

Answer:

Only that he appreciated the "heads-up."[1385]

Hanson testified that although she remembered reviewing this Q&A, she did not draft the answer or discuss it with Altman.[1386] She said only the first two meetings with Secretary Bentsen were described in the answer, not the third meeting that included Knight.[1387] Hanson said she did not suggest including the third meeting because the answer basically described the first two meetings the way Altman had described them during the third meeting, so that the inclusion of the third meeting would be superfluous.[1388] Hanson testified she had no idea where the point

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[1385] See id. The final version put in Altman's Q&A binder was essentially the same as the draft faxed by Hanson. See Q&A for "Why are you unwilling to Recuse Yourself?" (Feb. 1994) (Doc. No. 274-DC-00002598).

[1386] Hanson call sheet (Feb. 23, 1994) (Doc. No. 007-DC-00000386) (states, "Josh --> Sec. Q: meeting on recusal).

[1387] Hanson 9/29/95 GJ at 132-33.

[1388] Id.

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about Altman alerting Secretary Bentsen about the criminal referrals in September came from, because she had no knowledge of such a conversation.[1389]

F. On February 23, 1994, Treasury and White House Officials Had Further Contact.

Altman's appointment under the Vacancy Act as Interim CEO of the RTC expired on March 30, 1994. In anticipation that Altman might be asked at the hearings about his failure to recuse from the Madison Guaranty matter, his staff proposed he answer that, given the extension of the statute of limitations, he probably would not participate in any decision because the staff's recommendation would not reach the CEO before March 30, 1994.[1390]

1. Discussions Involved Roger Altman's Testimony on Recusal.

Hanson said that on February 23, the day before the hearings, Altman asked her to tell Nussbaum that Altman planned to state at the hearings that he would not participate in the Madison Guaranty matter because his Vacancy Act appointment would expire.[1391] Later on

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[1389] Late on the night of February 23, Steiner called Hanson and said he thought there should be a similar Q&A prepared for Secretary Bentsen's briefing book. Hanson 9/29/95 GJ at 134. Such an answer was prepared. Id. Before the hearing, Steiner prepared a memorandum for Altman addressing issues Altman needed to raise with Secretary Bentsen. See Memo from Josh Steiner, Department of Treasury Chief of Staff to Roger Altman, Interim CEO for the RTC (Mar. 5, 1994) (Doc. No. 010-DC-00000023). One was how Altman would answer questions about "the conversation between LMB and you concerning your recusal." See id. Steiner testified he did not remember preparing this memorandum and did not remember the substance of any conversation that may have taken place between Secretary Bentsen and Altman about Altman's recusal. Steiner 8/25/95 GJ at 88-89.

[1390] See Typewritten note "Why are You Unwilling to Recuse Yourself" (undated) (Doc. No. 274-DC-00002607) (produced by Altman). As it turned out, at the hearings, Altman was not asked about his failure to recuse, so he did not make his Vacancy Act announcement on February 24.

[1391] Hanson 4/21/94 Fiske GJ at 107. Nussbaum vaguely remembered Hanson's telephone call. Nussbaum 3/17/94 Fiske GJ at 108-09. Altman did not remember asking Hanson to make the call, but he said it would have made sense for him to do so, to spare Nussbaum from learning about Altman's statement from press accounts. Altman 9/12/95 GJ at 149-51.

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February 23, Eggleston called Hanson; he wanted to make sure that Altman would testify about the February 2 White House meeting if asked.[1392] Hanson read Eggleston the draft answer on that topic, as well as the proposed follow-up answer about the February 3 meeting; Eggleston said both proposed answers were fine.[1393] Eggleston remembered the proposed answers revealed the recusal discussion and that Altman planned to let his Vacancy Act appointment expire in lieu of recusing.[1394] Eggleston testified he probably had called Hanson at Ickes's request to be sure Altman understood the significance of the February 2 meeting and that it should be disclosed if a question arose about contacts.[1395]

Altman testified that the night of February 23, he called Ickes to let him know that at the hearings he would announce his March 30 departure as RTC CEO.[1396] He asked Ickes for a reaction; Ickes told him to do what he had to do and that he would call Altman if he had anything further to say.[1397] Ickes testified Altman said he was contemplating announcing his recusal before

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[1392] Eggleston 3/31/94 Fiske GJ at 81-82; Hanson 4/21/94 Fiske GJ at 106. On February 18, 1994, Eggleston had called Hanson to get some background information about the mechanics of the Oversight Board hearing. Eggleston 3/31/94 Fiske GJ at 79-80, 86. Eggleston said the White House (through Eggleston, Staff Secretary John Podesta, and Stern) was attempting to help the Oversight Board with this hearing and coordinate Democratic members of the Committee. Id. at 79. Although these additional communications between the White House and Treasury about the hearings included the likely Madison Guaranty questioning, there is no evidence the issue of contacts came up in these discussions. Altman did not remember Hanson telling him about her conversations with Nussbaum or Eggleston. Altman 9/12/95 GJ at 153.

[1393] Hanson 4/21/94 Fiske GJ at 106-07.

[1394] Eggleston 3/31/94 Fiske GJ at 84-85.

[1395] Id. at 81-82. Ickes did not remember asking that Eggleston make this call. Ickes 9/5/95 GJ at 62.

[1396] Altman 9/12/95 GJ at 151-52.

[1397] Altman 3/22/94 Fiske GJ at 78; Ickes 9/5/95 GJ at 63.

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or during the hearings.[1398] Ickes said he told Altman it was his decision, but that he did not see how things had changed since Altman's earlier decision not to recuse.[1399] Altman then asked Ickes to call him back with any further thoughts.[1400]

Ickes testified that shortly thereafter, he called Steiner, told him about his earlier conversation with Altman, and said he had nothing more to say about the recusal issue, which was Altman's decision.[1401] Steiner testified Ickes said the White House preferred that Altman not announce his March 30 departure from the RTC, but if he felt he had to, that would be all right with the White House.[1402] Ickes also said if Altman thought he should recuse during the hearing, then he should do so.[1403] Steiner reported this call to Altman the night of February 23.[1404]

Steiner's February 27, 1994 diary entry, covering the period from February 13 through February 27, said:

> We are very concerned that at the RTC oversight hearings the GOP would hammer away at the recusal issue so we renewed discussions w/ the WH about what RA would do when his term expired on March 30. Once again they were very concerned about him turning the RTC [over to] people they didn't know so RA did not formally commit himself to stepping down (he could stay on if we had formally nominated a successor).[1405]

[1398] Ickes 9/5/95 GJ at 62-63.

[1399] Id. at 63-64.

[1400] Id.

[1401] Id. at 64.

[1402] Steiner 8/25/95 GJ at 78-79.

[1403] Id. at 79.

[1404] Id.

[1405] See Steiner Diary (Dec. 12, 1993 through Feb. 27, 1994) (Doc. No. 010-DC-00000014) (typewritten version). Steiner said he called several people at the White House (including Podesta) on February 23 to see what they thought about Altman making an announcement about recusal. Steiner 8/25/95 GJ at 78. Steiner said his diary entry reflected the concerns expressed by Nussbaum at the February 2 meeting that the RTC was very partisan and, without Altman, might politicize the investigation. Id. at 73-74.

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2. Roger Altman Spoke with Senator Alfonse D'Amato before the Hearings.

Altman testified that late on February 23, he spoke with Senator D'Amato to advise that the RTC was producing documents Senator D'Amato had requested.[1406] Altman thought the Senator told him he planned to ask Altman about recusal at the hearing.[1407] Altman did not remember being told that the issue of White House contacts would arise.[1408]

3. Roger Altman Testified at the February 24, 1994 Senate Banking Committee Hearing.

During the hearing on February 24, Senator Phil Gramm raised the issue of communications by the RTC or the Department of Treasury with the White House on Madison Guaranty or Whitewater. The following exchange ensued:

Q. . . . Mr. Altman, I want to ask you first.

> Have you or any member of your staff had any communication with the President, the First Lady, or any of their representatives, including their legal counsel, or any member of their White House staff, concerning Whitewater or the Madison Savings & Loan?

A. I have had one substantive contact with White House staff, and I want to

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[1406] Altman 9/12/95 GJ at 148-49.

[1407] Id. at 149.

[1408] Id. During public hearings over the summer of 1994, Senator D'Amato confirmed that on February 23, he spoke with Altman and advised he would ask Altman about both recusal and contacts the Department of Treasury had with the White House about Madison Guaranty. Senate Banking Comm. Hearing, supra note 831, at 256-57 (Aug. 2, 1994) (questioning by A. D'Amato). Altman agreed about the former, but he could not remember discussing the latter. Id. There were two contemporaneous or near-contemporaneous witnesses to Altman's end of the phone call. Levy and Schloss testified that right after the call, Altman told each of them the Senator planned to ask whether he had any meetings at the White House about Madison Guaranty. Levy 6/9/96 GJ at 21; Schloss 6/27/95 GJ at 22. According to Levy, Altman responded, "It's a very simple answer. I had one subsequent meeting." Levy 6/9/96 GJ at 20-21. Also, Gross testified she found out that Senator D'Amato told Treasury before the February 24 hearings that he knew about the February 2 White House meeting. Gross 6/29/95 GJ at 12 .

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tell you about it.

Q. Let me, if I may, just given that "yes," I would like to know what the substance of the communication was, when it occurred, who initiated it, and what you were asked to do.

A. First of all, I initiated it.

About three weeks ago, Jean Hanson [sic], who is Treasury's General Counsel.

The purpose of that meeting was to describe the procedural reasons for the -- the procedural reasons for the then-impending -- then-impending -- February 28th deadline as far as the then-statute of limitations was concerned.

I am sure you know that that statute of limitations has subsequently been retroactively reinstated for certain types of civil claims.

And we explained the process which the RTC would follow in reaching a decision before that February 8 [sic] deadline; that it would be exactly identical to procedures used in any other case, any other PLS case, and that the RTC fundamentally would come to a conclusion as to whether or not there existed the basis for a claim, or whether there did not.

In the event a basis for a claim existed, then it would pursue either a tolling agreement -- which is the equivalent of a voluntary extension of the statute of limitations from the parties at interest -- or it would file that claim in court.

That was the whole conversation. I was asked one question. That question was whether we intended to provide the same briefing to attorneys for the parties at interest.

I said, I assume so.

I went back. Jean Hanson [sic] checked with the RTC General Counsel. The answer was: In due course.

I said, fine, that was it.

I have not had any contact with the President of the United States or the

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First Lady on any matter like this.[1409]

Hanson noticed right away that Altman had not mentioned the recusal discussion in describing the February 2 meeting.[1410] He had missed the entire paragraph on his prepared Q&A that included the sentence on recusal. Gross, who was sitting right behind Hanson, tapped Hanson on the shoulder and said Altman had not mentioned recusal, and Hanson responded she knew.[1411] Hanson said she considered handing Altman a note to remind him about the recusal discussion, but when Altman stated, "That was the whole conversation," Hanson thought the opportunity had passed to correct his testimony.[1412]

Eggleston also attended the hearing and testified that he was immediately concerned Altman had failed to mention the recusal discussion from the February 2 meeting.[1413] He telephoned Podesta from the hearing to tell him that Altman had not mentioned recusal.[1414] Stern remembered receiving a call from Eggleston as the hearing ended, in which Eggleston reported the recusal issue had not come up during the hearing.

Altman testified he used the word "substantive" to mean "relating to the substance of the

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[1409] Senate Banking Comm. Hearing, supra note 831, at 55-56 (Feb. 24, 1994) (testimony of R. Altman).

[1410] Hanson 4/21/94 Fiske GJ at 109; Hanson 9/29/95 GJ at 135.

[1411] Hanson 9/29/95 GJ at 135. Gross did not remember this brief communication. Gross 6/29/95 GJ at 9.

[1412] Hanson 9/29/95 GJ at 136. Hanson testified she was not then concerned about Altman's failure to mention the February 3 follow-up meeting because she actually was under the impression that he had mentioned it; she claimed it was not until she later reviewed the transcript that she realized he had failed to include this information. Id. at 136-37.

[1413] Eggleston 3/31/94 Fiske GJ at 87, 99-100.

[1414] Eggleston 3/31/94 Fiske GJ at 100-03. Podesta did not remember speaking with Mr. Eggleston while the latter attended the hearing or this early reference to Altman's failure to mention the recusal discussion. Podesta 4/7/94 Fiske GJ at 21.

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case," "the facts of the case," "the merits of the case," "the status of the case," "or where the case [was] going."[1415] He also testified that by "substantive" he meant "about the case, about the procedures applying to the case."[1416] He said he did not consider a discussion about his possible recusal a "substantive" discussion since he never associated himself with the substance of the case. He was de facto recused and thus did not view his recusal as relating to the procedures (and in his terminology "substance") of the case.[1417] Altman testified when he used the word "substantive," he was not thinking of other meetings that would be excluded by that word (other than the February 3 meeting).[1418]

Altman testified when he said, "That was the whole conversation," he meant that was the whole conversation about the "substance" of the case.[1419] He also said he was referring to what he thought was the purpose of the meeting, which was to discuss the statute of limitations procedures; the recusal discussion was a "by the way" remark.[1420] He claimed his failure to disclose the recusal discussion was not an attempt to conceal it, even asking the grand jury, "I mean, if I had had an intent, would I have sat around the night before with all these people, with the line 'recusal' in there? -- I mean, 10 or 12 people -- if I'd intended to conceal it? . . . and would

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[1415] Altman 9/12/95 GJ at 138.

[1416] Altman 3/22/94 Fiske GJ at 85.

[1417] Id. at 85-86.

[1418] Id. at 96; Altman 9/12/95 GJ at 139. Altman claimed he did not intentionally omit the prepared sentence on recusal, and wished he had read it out loud. Altman 3/22/94 Fiske GJ at 90. He agreed his answer as given was "susceptible to misinterpretation," and his distinction between the substance of the case and his recusal was "stupid" in retrospect given that few agreed with the distinction. Altman 9/12/95 GJ at 139. Reviewing the transcript of his testimony, Altman said he knew people must have thought he was trying to hide the recusal discussion. Altman 3/22/94 Fiske GJ at 90; Altman 3/22/94 GJ at 90.

[1419] Altman 3/22/94 Fiske GJ at 88-89.

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I have gone over to the White House and talked -- with our general counsel, taking with me, and four White House staff members, if I intended to conceal it?"[1421] Altman testified he did not think disclosing the recusal discussion would create more controversy.[1422]

Altman explained his statement that he was asked only one question during the February 2 meeting about the statute of limitations issue: "One question about the substance, that's what I meant."[1423] According to Altman, that explains why he did not disclose the questions he admits were asked by Senators during the recusal discussion.[1424] Altman said he did understand that Senator Gramm's question required him to answer for himself and for his staff; i.e., he had to address if either had any contacts with the White House about Madison Guaranty.[1425]

A short while later, Senator D'Amato, with reference to Altman's contacts asked:

Q. Let me ask you this. Prior to this meeting, was there any representation, was there any counsel, that was representing the President's interests or Mrs. Clinton's interests, or anyone else that you were aware of, as it relates to the matter that you went to brief them on?

A. No. Not to my knowledge. Nor were there any substantive conversations -- subsequent conversations.

Q. Did anyone request this meeting?

A. I requested the meeting.

Q. Was there any other meeting that may have been requested?

[1420] Id. at 90.

[1421] Id. at 89.

[1422] Id. at 90-91. He also claimed that in the preparation sessions nobody ever said the recusal aspect of the discussion was an explosive or particularly embarrassing fact. Id.

[1423] Id. at 91.

[1424] Id. at 91-92.

[1425] Altman 9/12/95 GJ at 133-34.

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A. No.

Q. There was no other meeting that you were aware of that the White House counsel requested?

A. No.

Q. Or anyone else from the White House?

A. No.

Q. Ickes?

A. I had no subsequent -- I received no subsequent requests for meetings.

Q. What about private counsel? Did private counsel -- I find it hard to believe that there was no private counsel. Are you saying to me that there was not even private counsel meeting with staff lawyers at some level?

A. Not to my knowledge, Senator.[1426]

Altman testified he meant to say there were no later, substantive conversations with the White House.[1427] He claimed he did not intentionally leave out his request for the February 3 meeting because as he understood the question, Senator D'Amato was asking if the White House had requested any other meetings.[1428] Altman claimed although he may have misinterpreted the question, he did not intentionally conceal the February 3 meeting.[1429]

Senator Bond then asked Altman questions about the criminal referrals:

Q. Next, when did you become aware of the RTC recommendations that further criminal prosecution be taken against Madison?

A. Last fall. I was advised that the question of a referral to the Justice

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[1426] Senate Banking Comm. Hearing, supra note 831, at 63-64 (Feb. 24, 1994) (testimony of R. Altman).

[1427] Altman 3/22/94 Fiske GJ at 92-93.

[1428] Id. at 94.

[1429] Id. at 95.

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Department was under consideration at the RTC. And as other members of the RTC staff will attest, I said that normal procedures with no deviations whatsoever should be pursued, including chain of command procedures, in terms of reaching that conclusion.

I might tell you that typically decisions like that are made at the Regional Office level, and it was in this case.

Q. Were you aware that the Regional Office had asked the National Office to make a determination as to whether the Clintons' name should be in the new expanded referral?

A. No.

Q. You did not know they were asking for the National Office to make a determination?

A. No. I was simply informed that this issue was on the table, and my reaction was -- and I had only one conversation about it -- that normal procedure should be followed. That is the way we are going to handle this thing from beginning to end.

Q. How was the White House notified of the referral?

A. They were not notified by the RTC, to the best of my knowledge.

Q. Nobody in your agency, to your knowledge, advised the White House staff that this was going to be a major -- this could be a major source of concern?

A. Not to my knowledge.[1430]

As soon as Altman provided this last response, Hanson said he turned back toward her (sitting behind him) and asked her a question.[1431] Hanson testified Altman asked her whether his answer was correct, and she responded she thought it was.[1432] Hanson then spoke with Kulka,

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[1430] Senate Banking Comm. Hearing, supra note 831, at 276-77 (Feb. 24, 1994) (testimony of R. Altman).

[1431] Hanson 9/29/95 GJ at 138.

[1432] Id. Altman also remembered that as soon as Senator Bond finished with him, he turned to Hanson to double-check his response. Altman testified he said to Hanson, "They didn't,

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seated next to her, and asked her if she knew whether the RTC had notified the White House about the referrals, and she said, "No."[1433]

Senator Domenici concluded the questioning on contacts:

Q. Mr. Altman, you spoke a while ago of your one contact with the White House regarding this, and you and your counsel went up to talk to the White House counsel.

A. One substantive contact.

Q. Please?

A. One substantive or meaningful contact.

Q. Well, I assume we are not arguing there that you had -- you are not suggesting you had more than one are you?

A. No. I am just saying that if you, you know, you run into someone in the hall, if you see that thing in the paper this morning, I am not including

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did they?" and Hanson responded, "No." Altman 9/12/95 GJ at 155. This Office retained lip reading experts from the FBI to examine the videotape of this incident. Because of the camera angles, they were not able to provide a definitive analysis of exactly what Altman said to Hanson. They did conclude the videotape is consistent with the versions given by both Altman and Hanson, that Altman asked Hanson a negative question along the lines of, "We didn't do that, did we?" and Hanson responded in the negative by shaking her head side to side to confirm Altman's memory.

[1433] Hanson 9/29/95 GJ at 138. Hanson remembered when Senator Bond asked his question she had a vague memory of speaking with Nussbaum, but remembered no other details other than the conversation was about the criminal referrals in some way. Id. at 138-39. Hanson testified she did not remember the October 14 White House meeting at the time of the February 24 hearings. Id. at 130. Hanson did not remember if she had her "flash" of recollection about the Nussbaum conversation before Altman turned to her or afterwards. Id. at 139. Hanson said she did not mention her conversation with Nussbaum to Altman after the hearing. Id. at 140. When she did recall this information, she did not believe Altman had to correct his testimony because she understood the questions as asking simply whether the RTC had notified the White House, not the Treasury Department. Id. at 139-40. Hanson also remembers thinking at the time that Treasury had not prepared a Q&A about the fall contacts for Altman. Id. at 139. Eggleston testified he did not have immediate concerns with Altman's response to Senator Bond. Eggleston 3/31/94 Fiske GJ at 87-88. He thought he may have temporarily forgotten about the fall contacts or simply not had concern for whatever unidentified reason. Id. at 88.

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that.[1434]

Altman testified he emphasized to Senator Domenici that he was referring to one "substantive or meaningful contact" to stress again that he was only talking about meetings about the substance of the case, and that he did not associate himself and his recusal with any such aspect of the case.[1435] Altman claimed while he was sitting there testifying he did not think about his conversation with McLarty and his February 3 meeting with Ickes and decide that they were not substantive.[1436] Rather, he thought the Senators were asking about only contacts with the White House about the case.[1437] Altman said his staff had already prepared a Q&A about the Ickes meeting calling their contact not substantive, but rather "incidental."[1438] He claimed he excluded his telephone conversation with McLarty because he viewed it as even less than "incidental."[1439] In defining what an "incidental" contact would be -- a hallway conversation about what had appeared in the press that morning -- Altman said he might have chosen a bad example, but simply meant to say he was not talking about incidental contacts.[1440]

Steiner recorded in his diary entry dated February 27, 1994 (covering the period February 13 through February 27):

> At the hearing, the recusal amazingly did not come up. The GOP did hammer away at whether RA had had any mtgs. w/ the WH. He admitted to having had

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[1434] Altman 5/13/94 Statement at 19-20.

[1435] Altman 3/22/94 Fiske GJ at 95-96.

[1436] Id. at 86-87.

[1437] Id. at 87.

[1438] Id. at 86, 97. As discussed above, Altman consistently defended his testimony on the grounds that he did not prepare the contacts Q&A and that his staff chose the descriptive terms "substantive" and "incidental." Id.

[1439] Id. at 86.

[1440] Id. at 97-98.

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one to brief them on the statute deadline. They also asked if staff had met, but RA gracefully ducked the question and did not refer to phone calls he had had.[1441]

The evidence does not indicate that anyone expressed to Altman immediately after his testimony any concerns about the accuracy or completeness of that testimony.

4. The RTC Hired Outside Counsel to Pursue the Madison Guaranty Matter.

The RTC retained the law firm Pillsbury, Madison & Sutro to handle the civil case on Madison Guaranty.[1442] Pillsbury partner Jay Stephens, a former U. S. Attorney for the District of Columbia, would be involved.[1443] At the February 24 hearings, Altman disclosed that the Pillsbury firm had been retained, though he did not mention Stephens by name.[1444]

[1441] See Steiner Diary (Dec. 12, 1993 through Feb. 27, 1994) (Doc. No.010-DC-00000014-15) (typewritten version). Steiner testified the phrase "gracefully ducked" was "an unfortunate choice of words." Steiner 3/31/94 Fiske GJ at 50. Steiner said when he wrote "ducked," he was referring to his own conversation with Stephanopoulos on February 16. Id. at 50-52. Steiner remembered telling Altman about his conversation with Stephanopoulos, so either Altman forgot about it or he had "gracefully ducked" the question by defining "meetings" such that he need not disclose this or other contacts. Id. at 51. Steiner assumed it was the latter. Id. Steiner testified that when he wrote this entry he still did not remember the October 14 meeting. Id. He testified that as he left the hearing he was concerned only about Altman's use of the term "heads-up," and Altman's failure to mention Steiner's February 16 meeting with George Stephanopoulos. Id. at 53-54.

[1442] Kulka 5/5/95 GJ at 54-56.

[1443] Id. at 56.

[1444] Senate Banking Comm. Hearing, supra note 831, at 69 (Feb. 24, 1994) (testimony of R. Altman). A Q&A was prepared for Altman about the retention of the Pillsbury firm; it did not mention Stephens by name. See Q & A at 35 (undated) (Doc. No. 274-DC-00002576). Klein learned on the afternoon of February 24 that Jay Stephens would be involved on the Madison Guaranty matter. Klein 7/23/94 Senate Banking Comm. Depo. at 81. He then told a number of people at the White House, such as Eggleston, Lindsey, and maybe Stephanopoulos. Id. at 81. On February 24 or 25, Eggleston called Hanson to confirm Stephens's involvement. Eggleston 3/31/94 Fiske GJ at 90-91. Hanson thought (incorrectly at that time) Pillsbury, Madison's retention was still confidential, so Hanson said she would get back to Eggleston with an answer. Hanson 9/29/95 GJ at 167; Hanson 4/21/94 Fiske GJ at 118-19. She did not do so. Id. at 118-19. Eggleston said he made this call to Hanson to ascertain whether the Jay Stephens who was hired was the former U.S. Attorney from the District of Columbia. Eggleston 3/31/94 Fiske GJ at 91.

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5. Altman's February 25 Recusal.

On February 25, the New York Times published a front-page article about Altman's testimony that was highly critical of the February 2 meeting, implying that the White House had received an update on the underlying facts of the case.[1445] The article upset Altman, and he decided early that morning, without consulting anyone at Treasury, to recuse and avoid any appearance of a conflict of interest.[1446]

Altman prepared a press release announcing his recusal.[1447] Later Altman spoke with Howell Raines, the New York Times's editorial page editor.[1448] Raines reported he was in the process of writing a harsh editorial about the February 2 meeting.[1449] Altman tried to explain the meeting, allegedly without success as Raines appeared to have his mind made up about the content of his planned editorial.[1450] During this conversation, Altman told Raines that he had decided to recuse himself.[1451] Then, Altman directed release of his previously drafted recusal statement.[1452]

Steiner's diary entry for February 27, 1994 (covering the period February 13 through

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[1445] Stephen Labaton, Regulator Briefed White House Aides in Inquiry on S. & L., N.Y. Times, Feb. 25, 1994, at A1.

[1446] Altman 9/12/95 GJ at 157-59. Altman did have several conversations with Jack DeVore, who by that date had retired and was in Texas. Id. at 158. Altman sought DeVore's advice about how to make his recusal announcement. Id. at 158-59. DeVore recommended Altman avoid "pour[ing] kerosene on the fire," and suggested Altman wait a few days before making his announcement. Id. at 161.

[1447] Id. at 162.

[1448] Id. at 160.

[1449] Id.

[1450] See Altman 9/12/95 GJ at 160-61.

[1451] Id. at 162.

[1452] Id.

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February 27) reads:

> The next day, the NYT ran a frontpage story on the mtg. The heat was on. We spent a tortured day trying to decide if he should recuse himself. I spoke w/ Podesta to let him know of our deliberations. Very frustrating that he was the chosen point of contact since he clearly was not in the complete confidence of George and Harold. After Howell Rains [sic] from the NYT called to say that they were going to write a brutal editorial, RA decided to recuse himself.[1453]

Steiner remembered it was only during his telephone call with Raines that Altman decided to remove himself from the Madison Guaranty matter.[1454] After that call, Steiner called Podesta to tell him of Altman's decision.[1455] Podesta confirmed the relevant details of Steiner's story, and testified he thought he told Stephanopoulos and perhaps Ickes after he learned of Altman's recusal announcement.[1456]

6. Ickes and Stephanopoulos Telephoned Altman.

Altman testified that shortly after he announced his recusal on February 25, he received a call from Ickes and Stephanopoulos who were both on the line.[1457] Altman said they were upset that Altman had not told the White House about his recusal in advance.[1458] They were trying to subdue press concerns about the February 2 meeting before the recusal announcement,

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[1453] See Steiner Diary (Dec. 12, 1993 through Feb. 27, 1994) (Doc. No. 010-DC-00000014-15) (typewritten version).

[1454] Steiner 3/31/94 Fiske GJ at 59-60.

[1455] Id. at 60. Stern remembered a similar conversation with Steiner on February 25. Stern 6/6/95 GJ at 46. He testified Steiner called him to say that Altman was seriously considering recusing himself from the Madison Guaranty matter and that he would not be consulting with the White House on the issue. Id. Altman said he was unaware of any effort by anyone at the Treasury Department to tell the White House that he was again considering recusal. Altman 9/12/95 GJ at 159-60.

[1456] Podesta 4/7/94 Fiske GJ at 28-30

[1457] Altman 9/12/95 GJ at 162.

[1458] Id.

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attempting to persuade the media that nothing improper happened.[1459] On the heels of that effort, Altman's recusal announcement could imply that something out of the ordinary had taken place.[1460] Altman also remembered being told that President Clinton was livid about the recusal decision for the same reason.[1461] Altman told them that he was past the point of discussion, and wanted to get the matter over with.[1462] Altman recalled Stephanopoulos did most of the talking during this part of the conversation (with some contributions from Ickes).[1463] It was Stephanopoulos who mentioned the President's reaction to the recusal decision.[1464]

Altman testified "they were in a sufficiently angry frame of mind that pretty quickly I got tense too."[1465] Stephanopoulos then asked him about the retention of Jay Stephens to pursue the civil investigation of the Madison Guaranty matter.[1466] When Altman asked who Jay Stephens was, Stephanopoulos identified him as an extremely partisan former U.S. Attorney and Republican who was hired by the RTC as outside counsel on the Madison matter.[1467] Stephanopoulos asked how that could happen.[1468] Altman told Stephanopoulos he knew nothing about it, and that the RTC did not clear such decisions through him.[1469] Either Ickes or

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[1459] Id. at 163.

[1460] Id.

[1461] Id.; see also Altman 3/22/94 Fiske GJ at 101.

[1462] Altman 9/12/95 GJ at 164.

[1463] Id. at 164.

[1464] Id. at 163-64.

[1465] Id. at 164.

[1466] Id. at 164-65.

[1467] Id. at 165.

[1468] Id.

[1469] Altman 3/22/94 Fiske GJ at 101-02.

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Stephanopoulos asked if the hiring of Stephens was final."[1470] Altman, bothered by the question, replied if the agency had hired Stephens, the decision was final.[1471] Ickes and Stephanopoulos told Altman that the President was also upset about the retention of Jay Stephens.[1472] Stephanopoulos then told Altman to write a handwritten note to the President on your recusal decision."[1473]

7. Altman Told Steiner about the White House Call.

Shortly after his February 25 telephone conversation with Ickes and Stephanopoulos, Altman told Steiner about it.[1474] He remembered telling Steiner that he thought Ickes and Stephanopoulos were "nuts" to bring up the issue of Stephens's retention and ask if it was final.[1475] The implication was that if the retention was not final, then perhaps it could be reversed, and that notion, to Altman, was "crazy and stupid."[1476] Altman thought he asked Steiner to check with his White House contacts if President Clinton really was angry or just blowing off steam.[1477]

[1470] Id. at 102. In his second grand jury appearance, Altman said they "might" have asked if the retention was final. Altman 9/12/95 GJ at 165.

[1471] Altman 3/22/94 Fiske GJ at 102-03.

[1472] Id. at 102.

[1473] Id. at 103.

[1474] Id. at 106-07.

[1475] Id. at 107.

[1476] Id.

[1477] Id. Steiner said although he was in Altman's office for part of the Ickes/Stephanopoulos phone call, his knowledge of it came from Altman's later discussion with him. Steiner 8/25/95 GJ at 99; Stephanopoulos 9/8/95 GJ at 38-40; Ickes 3/17/94 Fiske GJ at 76-83; Steiner 8/25/95 GJ at 100. Steiner testified Altman described the call as raising two issues: first, the manner of Altman's recusal; and second, how Stephens was selected and if anything could be done about his retention. Id. Altman described the hiring process, and said there was nothing that could now be done about it. Id. at 98-99. Altman also reported that Stephanopoulos

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8. Ickes Testified about the February 25 Call with Altman.

Ickes testified that on March 17, 1994, Stephanopoulos called Altman upon learning that Altman "had apparently recused himself in a telephone conversation with a member of the New York Times." Ickes described the conversation as follows:

> A. I think George did most of the talking, and asked if it was true that he had recused himself, and he said he had.
>
> Q. And what else happened?
>
> A. That was about it. George said we were caught way off base . . . since he had taken the opposite position during the Senate Banking hearings . . . .
>
> . . . .
>
> Q. You would not characterize this as any anger coming from you or Mr. Stephanopoulos to Mr. Altman?
>
> A. It wasn't anger, it was, you know, very much of a surprise because of what had transpired the day before.
>
> Q. Was anything else discussed during this telephone conversation?
>
> A. Not that I recall. I think George -- either George or I suggested that he write the President about it, but that -- it was, again, a very short conversation.
>
> . . . .
>
> Q. Was anything told to Mr. Altman about what the President's reaction was to this?
>
> A. Not that I recall. I don't know what the President's reaction was, because I had not talked to him.
>
> Q. Did you or Mr. Stephanopoulos say to Mr. Altman, in words or substance, the President was angry about this?

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suggested Altman write the President a letter apologizing about the way he recused himself. Steiner 3/15/94 Fiske Int. at 8.

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A. I don't recall anything, because I don't know -- I had not talked to the President, so I had no way of knowing whether he was or whether he wasn't. And I don't know whether George had talked to the President. I didn't even know where the President was that day.

Q. But do you recall Mr. Stephanopoulos saying words to the effect that the President was angry about this?

A. I don't recall him saying that.

. . . .

Q. Do you recall anything else that went on during this telephone conversation?

A. No, it was fairly short -- it was a fairly short phone conversation.

Q. Do you know whether there were any other topics discussed?

A. Not that I recall.

. . . .

Q. Do you remember Jay Stephens coming up in this conversation with Mr. Altman?

A. No, I do not recall anything about Jay Stephens in that conversation.

Q. Do you recall ever discussing Jay Stephens with Mr. Altman?

A. I may have, I doubt it.

Q. Do you recall discussing Jay Stephens with anybody from the Department of the Treasury?

A. I think Altman -- if I discussed it with anybody in the Department of the Treasury it would have been Altman, and I don't recall discussing Stephens with Altman.[1478]

In an interview with the Treasury Department's Office of Inspector General on July 15, 1994 (which included representatives from the RTC Office of Inspector General), Ickes was once

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again asked if there was any talk about Stephens during the February 25 telephone call with Altman.[1479] Ickes responded: "There may have been. I don't know whether that was discussed then, but it may well have been. That may well have been a topic of the conversation. It was a very short telephone conversation."[1480] When asked if he ever participated in a discussion with the Treasury Department about Stephens and his role in the Madison Guaranty matter, Ickes responded, "I don't recall a specific conversation. If it occurred, I think it would have occurred during that telephone conversation. I don't recall any other time in which I would have discussed Stephens."[1481]

In his testimony before the Senate Banking Committee on July 24, 1994, Ickes said, "I do not recall exactly when I learned that [Stephens's] firm had been retained by the RTC. I tend to think it was after the 25th, but as I sit here today, I don't recall. It could have been shortly before the 25th."[1482] Ickes also said the President "did express a view" about the Stephens retention,[1483] and Ickes "tend[ed] to think" President Clinton did so "after the 25th, but I can't guarantee that."[1484] Ickes also testified the President expressed his view in Ickes's presence, that no one else was present, and that "[t]he gist of it was he expressed grave concern about the fact that Stephens's firm and we understood that they had been retained and we understood Stephens in particular was going to be working with the RTC on that . . . ." Ickes said he "probably did" tell

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[1478] Ickes 3/17/94 Fiske GJ at 80-84.

[1479] Ickes 7/19/94 Treas. IG at 30.

[1480] Id.

[1481] Id.

[1482] Ickes 7/24/94 Senate Banking Comm. Depo. at 243-45.

[1483] Id. at 244.

[1484] Id. at 245-46.

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Stephanopoulos about the conversation.[1485]

During his September 5, 1995 appearance before the grand jury, Ickes was asked whether Stephanopoulos indicated during or after the February 25, 1994 conversation that he had spoken to the President about Altman's recusal. He testified as follows:

> A. I don't recall that. He may well have. I know that I had not spoken to the President and had no idea whether the President knew or what his view was on it, and I don't recall whether George said that he had spoken with the President or not. I don't even know where the President was that day . . . .
>
> . . . .
>
> Q. Was there any suggestion by Stephanopoulos that the President was or might be upset about Altman's recusal decision?
>
> A. I don't recall either was or might be. The was implies that George had talked to the President, and I don't recall that he had, although he may have. I can't recall. And there might be, I think, at most if George expressed any indication about what the President might feel is again surprise, which would not have been uncommon.[1486]

Ickes was "absolutely" confident that he spoke with the President and the First Lady about the recusal decision, but he could not remember the "time, date, place, or who was present."[1487] Ickes testified that "the only view [the President] had was the view that all of us had, we were surprised . . . ." On Jay Stephens's retention, Ickes testified as follows:

> Q. Were you ever a participant in any discussions at the White House about trying to see if Stephens could be removed from the RTC's civil investigation?
>
> A. No. It was my -- when I say "no," I don't recall any. It was my impression and it was an impression only that the decision to retain his firm had, in fact been made. . . . So, I don't recall participating in any discussions about removing him because my impression was that he was immovable.

[1485] Id. at 243-45.

[1486] Ickes 9/5/95 GJ at 69-70

[1487] Id. at 71.

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Q. And are you aware if anyone on the White House staff trying to take any steps to reverse that decision by the RTC to hire Stephens?

A. No, I don't recall having any discussions about removing him. . . [1488]

9. Stephanopoulos Testified about the February 25 Call with Altman.

During his March 22, 1994 grand jury appearance, Stephanopoulos testified as follows:

Q. Tell me to the best of your recollection what your conversation was with Roger Altman.

A. Just asked him what happened with the New York Times. He talked about his interview with Hal [sic] Raines. And I remember saying at the end of it, "I think as a courtesy, you should write the President a note to explain your decision."

Q. Regarding the recusal?

A. Mm-hmm.

. . . .

Q. And that's all you remember about --

A. That's really -- you know, that was the general -- it wasn't a long conversation.

Q. But you don't remember anything else specifically about the conversation?

A. Just, again, that Harold was there.

Q. Nothing else?

. . . .

A. . . . No, I don't really remember.

Q. Do you remember telling Roger Altman that the President was upset?

A. Again, I don't remember that.

Q. Do you remember speaking to the President, either before or after your conversation with Roger Altman, about Roger Altman's decision to recuse

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[1488] Id. at 78.

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himself?

A. Not before.

. . . .

Q. So, you don't remember any reaction at all of the President?

A. No.

Q. Do you remember the President being angry at any time about the fact that Roger Altman recused himself?

A. No. I mean, just -- I don't remember. I just -- I remember giving him the facts, and we just didn't really talk about it.

Q. But you don't remember him being angry in any way?

A. No.

Q. Now, as part of your conversation with Roger Altman on that Friday, February 25th, you also raised Jay Stephens with him?

A. I don't remember doing that.

Q. You don't remember doing that?

A. No.

Q. Do you remember saying to Roger Altman that the President . . . was angry about the fact that Jay Stephens was hired?

A. I don't remember that.

Q. Do you remember talking to the President about the fact that Jay Stephens had been hired on the Madison matter?

A. Again, not before the conversation with Roger. I think it was just at the end of a day, after all this, I went to him and said, you know, "Here's what Roger said." And I probably reported that this is how the Jay Stephens thing got -- here's how he got picked -- it's something about a board. And that was it.

Q. Did he have any reaction to your statements about what you learned about Jay Stephens being picked?

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A. No particular one, no.

. . . .

Q. Just so I understand it, you are clear that before your conversation with Roger Altman, you did not have a conversation with the President about Altman's recusal or about Jay Stephens?

A. I have no memory of any. [1489]

Before the Senate Banking Committee, Stephanopoulos testified that "[a]ll I remember of the conversation is I suggest that you write a letter to the [P]resident, essentially explaining what happened, as a courtesy."[1490] Stephanopoulos said he had no discussion with Altman about the latter's decision to recuse himself.[1491] He also testified he could not remember saying anything to Altman about the President's state of mind about either recusal or removing Stephens.[1492]

During his September 8, 1995 grand jury appearance, Stephanopoulos testified as follows about his February 25 telephone conversation with Altman:

A. The only thing I remember about the conversation is, we discussed the New York Times recusal. Roger sort of explained what happened, and I suggested to him that he write the President a note explaining it to him.

Q. You asked Altman about how the recusal had happened?

A. No. I think he was calling to say how it happened.

. . . .

Q. On the subject of recusal, what did Altman say?

. . . .

A. Again, I don't remember the words. But it is irregular to let the newspaper know before you let your boss know, sure.

. . . .

[1489] Stephanopoulos 3/22/94 Fiske GJ at 42-46.

[1490] Stephanopoulos 7/19/94 Senate Banking Comm. Depo. at 49.

[1491] Id. at 50.

[1492] Stephanopoulos 3/22/94 Fiske GJ at 46-47; Stephanopoulos 9/8/95 GJ at 50, 52.

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Q. Did any other subject come up with him?

A. I don't think so. I've read accounts since then about discussing Jay Stephens with him. I don't remember it in that conversation.

Q. You don't remember any discussion with him about the hiring [of] Jay Stephens?

A. No.

Q. You don't remember saying anything to him during that conversation, or any other time on February 25th, with respect to the hiring of Jay Stephens?

A. No. . . . As I've said in all the other testimony, I have no specific contemporaneous memory of that.

Q. Do you remember specifically expressing to Mr. Altman any concern about the hiring of Jay Stephens?

A. I just don't remember that, no.

Q. Do you remember saying anything to Mr. Altman about the President's reaction to the hiring of Jay Stephens?

A. No. I remember asking him to write the President a note explaining it, but not characterizing the President's reaction, because I hadn't talked to the President about it.

. . . .

Q. . . . with respect to Altman, do you remember ever discussing the subject of the hiring of Jay Stephens with Mr. Altman?

A. I just don't, no.

Q. So I take it that you also don't remember ever saying to Mr. Altman words to the effect of, "Can anything be done about the hiring of Jay Stephens?" or "Can this be undone?"

A. Right, I just don't. I mean, again, hearing that he was hired by an independent board and bidding process, that is the end of it to me. I mean,

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I know there's nothing to be done.[1493]

Stephanopoulos remembered talking with the President about both the recusal and the Stephens retention, but said he was "sure it was after" his conversations with Altman and Steiner.[1494] About the President's reaction to both the issues, Stephanopoulos testified it was "[s]imilar to the way I have discussed my kind of resignation. He shrugged his shoulders. Nothing to be done."

10. Stephanopoulos Spoke with Steiner.

During his March 22, 1994 grand jury appearance, Stephanopoulos testified Steiner called him on February 25, 1994 to say that Altman told the New York Times that he would be recusing himself. Stephanopoulos also testified as follows:

A. I think in the course of that conversation, I had also found out that Jay Stephens had been involved in some way in the Madison investigation, so I asked him about that, what happened there.

Q. What did you say to him?

A. I don't remember the exact words. I know I wanted -- frankly, I couldn't understand how Jay Stephens had been chosen, and I wanted to know the facts.

. . . .

Q. Do you remember how you learned that Jay Stephens had some role in connection with Madison?

A. I don't remember exactly. I mean, I knew -- you know, these things you just pick up during the day. I knew. I don't --

. . .

Q. Do you remember specifically what you asked Josh Steiner about Jay Stephens?

[1493] Stephanopoulos 9/8/95 GJ at 49-52, 65.

[1494] Id. at 54-55.

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A. Again, I don't remember specifically. I know -- I just wanted the facts of how he was chosen because I expected we were going to get questions on it.

. . . .

Q. What did he tell you?

A. Again, I don't remember exactly. It was something along the lines of that it was some independent board and a bidding process.

Q. Do you remember anything else that occurred during that conversation?

A. I know that I -- you know, mostly I remember that I was just very puzzled. I just couldn't understand how somebody like Jay Stephens could get picked. I probably blew off some steam, asked him the facts, he gave me the facts, and that was that.

. . . .

Q. Do you remember asking him whether there was any way to get rid of Jay Stephens?

A. I don't remember that.

Q. You don't know one way or the other?

A. I just don't remember. I don't remember the words to the conversation. I knew I wanted to know the facts; I know that I was probably more expressive than I normally am; and I knew that once I got facts, that that was that, and we went on.

Q. When you say you don't remember that -- when I ask did you say that, I mean in words or in substance. Did you say to him in words or in substance, "Is there any way to get rid of this guy?"

A. Not that I can remember . . . .[1495]

At his September 8, 1995 grand jury appearance, Stephanopoulos testified, in part, as follows:

Q. Were there any other topics raised during this conversation?

[1495] Id. at 34-39.

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A. I think it was during the course of that conversation where I asked how Jay Stephens came to be hired.

Q. When did you learn that Jay Stephens had been hired?

A. I'm not sure. I assume it was either that day or at some point the day before. It had more or less even become common knowledge. I don't know how I found out, but I knew I knew that day.

. . . .

Q. What did you say to Mr. Steiner about Jay Stephens being hired?

A. Again, I'll just preface it all with, I don't remember any of the exact words. How did this happen? How could a political opponent of the President be hired to investigate the President? It's a conflict of interest. I was very surprised, very puzzled.

. . . .

Q. . . . Would you say that you were upset about it?

A. You only blow off steam if you're upset. I suppose so, yeah.

. . . .

Q. Do you remember asking him, either expressly or implicitly, whether anything could be changed with respect to that hiring decision?

A. I don't remember that. I remember asking, "How did it happen? What was the process? How could something like this happen?"

Q. Do you remember asking Josh Steiner whether there was any way to get rid of Jay Stephens?

A. No.[1496]

. . . .

Q. . . . Do you remember ever, in any conversation with Josh Steiner, saying anything to the effect of "What can be done about this hiring of Jay Stephens?"

A. Again, not these words. I mean, I did want to know how it had happened. And I suppose somebody could construe that that's implied in the question about what happened. But I wanted the facts on, you know, "How did he

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[1496] Stephanopoulos 9/8/95 GJ at 43-45, 47.

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get hired."

. . . .

Q. You don't remember ever saying to him, "Can this be undone?" words to that effect?

A. No.[1497]

Steiner said shortly after he told Podesta about the recusal decision, Stephanopoulos called him.[1498] He remembered the discussion as follows:

A. There were two subjects. The first was recusal, and I asked Stephanopoulos what he thought of Altman's decision. He said he thought it was unfortunate or a poor one. . . . The second issue related to Jay Stephens, and Stephanopoulos asked me how Stephens had come to be appointed. He expressed a view that it was inappropriate for him to have been appointed. He thought there was a conflict of interest that existed, and he asked whether anything could be done about it.

. . . .

On the issue of Jay Stephens, I explained how he came to be appointed, a similar description to the one that I provided to Podesta and Stern the week previously or sometime previously. I suspect I shared my view that it seemed inappropriate or outrageous and I also explained to him that there was nothing that could be done about it.[1499]

Steiner told Altman about of his conversation with Stephanopoulos.[1500] Altman thought Steiner "had done the right thing in saying that nothing could be done about Jay Stephens."[1501] When asked about whether Stephanopoulos suggested the Treasury Department needed to find a way to "get rid" of Stephens (as indicated in Steiner's diary entry), Steiner testified "I think Stephanopoulos asked if anything could be done about it. That's how I recall the

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[1497] Id. at 64-65.

[1498] Steiner 8/25/95 GJ at 96-97.

[1499] Steiner 8/25/95 GJ at 97-98.

[1500] Id. at 98.

[1501] Id. at 99.

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conversation."[1502]

At his March 21, 1994 interview, Steiner described Stephanopoulos's views about Stephens in these terms:

> [Stephanopoulos] expressed outrage about the appointment and said that the RTC should get rid of him because [Stephens] had a huge conflict and, in view of his posture vis-à-vis [President Clinton], his having that position was outrageous. [Steiner] responded that it would be stupid and impolitic to try to do such a thing.[1503]

Altman testified Steiner told him about his conversation with Stephanopoulos, and Steiner reported the conversation began with Stephanopoulos "saying something like, Josh, this is a conversation which never happened."[1504] Altman remembered saying to Steiner, "[T]hat's really silly, because there's no such thing as a conversation that never happened and these are people, obviously, who have never been deposed."[1505] Neither Steiner nor Stephanopoulos remembered the latter saying, "This conversation never happened."[1506] Steiner did remember that Altman made a comment like, "These people have never been deposed" or "These people have never been questioned under oath."[1507] Steiner said:

> A. . . . I don't recall Stephanopoulos saying that to me. What you just said, it presents a credible scenario, or a plausible scenario as to why he might have said that. It's also plausible that he said that because at the time, we

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[1502] Id. at 138.

[1503] Steiner 3/21/94 Fiske Int. at 8. Also in contrast to his later grand jury testimony, Steiner told the grand jury on March 31, 1994 that Stephanopoulos "asked whether anything could be done to have [Mr. Stephens] no longer working on this case . . . ." Steiner 3/31/94 Fiske GJ at 62.

[1504] Altman 9/12/95 GJ at 167-68.

[1505] Altman 9/12/95 GJ at 168.

[1506] Steiner 3/15/94 Fiske Int. at 11; Steiner 3/31/94 GJ at 75; Stephanopoulos 9/8/95 GJ at 57; Stephanopoulos 3/22/94 GJ at 48.

[1507] Steiner 3/31/94 Fiske GJ at 75.

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were concerned about congressional hearings or further congressional hearings. There was a Senate hearing -- a House hearing that we were anticipating a month later, and we were concerned about whether things under that circumstance would come up when you're effectively under oath. When you testify before Congress -- you are under oath when you testify before Congress, as far as I'm concerned. The scenario you've put forward is plausible. I just don't remember him saying that, because I don't. But it is possible that he did say it, and it's possible that that's why Altman said what he said. [1508]

11. Other Witnesses' Testimony about Altman's Recusal, Stephens's Retention, and White House-Treasury Contacts about Those Subjects.

a. Michael Levy.

Michael Levy, who was then Assistant Secretary of the Treasury for Legislative Affairs, testified Steiner told him that he (Steiner) talked with Stephanopoulos about the Stephens retention, and that "he had to cool him down."[1509] Levy also said: "I don't remember at the time being told anything about the White House wanted him [i.e., Stephens] fired and, you know, anything like that. I don't remember any conversation at that time where I was told that. Now, I know I've heard conversations about this on television and in hearings. But I had no memory of a conversation at that time."[1510]

b. Mack McLarty.

Mack McLarty testified about a conversation he had with Stephanopoulos about Stephanopoulos's conversation with Steiner.[1511] McLarty said: "[H]e characterized the call as one that he was upset about, blowing off steam, and perhaps said things that he should not have

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[1508] Id. at 75-76.

[1509] Levy 6/9/95 GJ at 73-74.

[1510] Id. at 74.

[1511] McLarty 4/25/95 GJ at 147.

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said, is how I remember it."[1512]

c. John Podesta.

Podesta testified he had a discussion with Stephanopoulos on February 25 or later about how Stephens was chosen.[1513] Podesta testified Stephanopoulos expressed a "curiosity" about the procedure, so Podesta contacted Steiner the next week, and then reported back to Stephanopoulos.[1514] Podesta did not remember Stephanopoulos at any point mentioning a desire to have Stephens removed from the Madison Guaranty matter.[1515]

d. President Clinton.

In sworn testimony given to the Office of Independent Counsel Robert Fiske, President Clinton recounted his conversation with Stephanopoulos about Altman's decision to recuse. When the President was asked if he expressed anger to Stephanopoulos about the recusal, he responded:

> A. Yes, but not so much about that. I was angry about the whole situation. I thought it was -- had been -- that it had been -- I felt that the New York Times had distorted the facts and had blown it all out of proportions, and had characterized it in ways that were unfair.
>
> Q. Did you express anger at the fact that Altman had recused himself?
>
> A. I expressed anger at the fact that he was apparently making the decision based on the New York Times, a conversation with Hal [sic] Raines, rather than some objective decision that was the right thing to do. I later learned, I don't remember when, that Secretary Bentsen and others over there thought he should recuse. And as soon as I did, that was fine with me.

[1512] Id. at 147-48.

[1513] Podesta 4/7/94 Fiske GJ at 26.

[1514] Id. at 27.

[1515] Id. at 25-28.

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President Clinton did not remember telling Stephanopoulos to call Altman or anyone else about the recusal and his displeasure over it.[1516] About the Stephens retention, the President testified:

> Q. What was your reaction to the appointment of Jay Stephens?
>
> A. I was angry and concerned.
>
> . . . .
>
> Q. Did you express that view to Mr. Stephanopoulos?
>
> A. I did.
>
> . . . .
>
> Q. Did you ask Mr. Stephanopoulos to do what he could to get this changed?
>
> A. No. What I remember asking Mr. Stephanopoulos is whether this had already -- was done. And my recollection is he said it was done. And so I just was left to fume about it.[1517]

President Clinton also testified he did not remember giving Stephanopoulos any instructions to call Altman or Steiner or anyone at the Treasury Department.[1518] About whether he ever discussed with Stephanopoulos whether the latter made any such call, he testified:

> A. . . . I've heard so much since then and read so much since then. I can't say for sure, but I do not believe that I am aware of exactly what contacts Mr. Stephanopoulos did or did not have with Treasury about which events.
>
> Q. About Mr. Stephens?
>
> A. That's correct. But I was very clear and I was very angry about it. I thought it was a bad decision then. I still think it's a bad decision.[1519]

[1516] W. Clinton 6/12/94 Fiske Depo. at 58-59, 61.

[1517] W. Clinton 6/12/94 Fiske Depo. at 63-64.

[1518] Id. at 65.

[1519] Id. at 66. Podesta testified he had "first-hand knowledge" of the President's views on the subject, because at a meeting sometime in March, the President said he thought the appointment was unfair in light of Stephens's prior conduct. Podesta 6/7/95 GJ at 89-90. Ickes

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G. Hanson Talked with Steiner about the Stephens Retention.

Hanson testified she had a number of discussions with Steiner about the Stephens retention, although she could not remember the sequence or circumstances of the discussions.[1520] These discussions took place after the call from Eggleston on the afternoon of February 24,[1521] Hanson remembered Steiner asking her if it was true that the RTC had hired Jay Stephens.[1522]

At another point, Hanson said Steiner remarked to her, "Do you believe those guys, they want to see if they can get rid of Jay Stephens."[1523] Hanson's understanding of that remark was that Steiner had been talking with people at the White House (whom Steiner did not identify) about the Stephens retention, and that Steiner felt the White House was being foolish in trying to remove Stephens.[1524]

Hanson testified that, Steiner also asked whether Independent Counsel Fiske could take

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testified that in the February 25, 1994 time period the President expressed "grave concern" about the Stephens retention; he also said he probably told Stephanopoulos about his conversation with the President. Ickes 7/24/94 Senate Banking Comm. Depo. at 244-46. McLarty testified he never spoke with the President about Stephens, but he did walk into the Oval Office when "the President was discussing the Stephens appointment with Mr. Lindsey, expressing very much the same sentiment that I expressed to you [of concern]. And, as they concluded that visit, the President somewhat explained to me why he was concerned, knowing that I probably would not have the background of the Stephens appointment." McLarty 4/25/95 GJ at 145. McLarty described the President's reaction as one of surprise and concern. He also said that "[f]rustrated might be a proper adjective." Id. at 146 (McLarty "now believes that [Mr. Lindsey] remained in the Oval Office while [Mr. McLarty] discussed the hiring of [Mr. Stephens] with the President."). Lindsey testified, on the other hand, that he never had a talk with the President about the hiring of Stephens, and was never in his presence when the subject came up. Lindsey 3/24/94 Fiske GJ at 73.

[1520] Hanson 4/21/94 Fiske GJ at 120.

[1521] Id. at 119.

[1522] Id.

[1523] Id. at 120.

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over the Madison Guaranty civil investigation.[1525] In response to a question from Hanson, Steiner confirmed the purpose of the step would be to remove Stephens.[1526] Hanson replied the idea had come up before; Fiske's charter probably included the civil matter, but the RTC did not have the power to cede the investigation to Fiske.[1527] Hanson also mentioned that if Congress pushed the issue, Fiske might have to take over the civil investigation.[1528]

Hanson remembered another conversation involving Steiner and Levy in which Steiner said he was upset about the Stephens retention, and Hanson asked him who Stephens was.[1529] Steiner said Stephens was a former U.S. Attorney who had resigned his post at the request of the Clinton Administration.[1530] According to Hanson, Steiner said Kulka should be fired for retaining Stephens.[1531]

Steiner did remember asking either Hanson or Gross to check into how Stephens was retained.[1532] He thought that Levy was in the room when he made that request.[1533] Steiner expressed the view during that meeting that Stephens was a "poor choice," and he pointed out

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[1524] Id.

[1525] Id. at 121.

[1526] Id.

[1527] Id.

[1528] Id. at 121-22.

[1529] Hanson 9/29/95 GJ at 170; Hanson 4/21/94 Fiske GJ at 122. Levy did not remember Steiner saying that Kulka should be fired for retaining Stephens. Levy 6/9/95 GJ at 71-72. Both Levy and Steiner thought the Stephens hiring was outrageous. Id. Kulka testified she did not remember ever receiving any inquiry from anyone at the Treasury Department about Stephens's hiring. Kulka 5/5/95 GJ at 58-59. She said no one ever suggested to her that Stephens should not have been hired or that he should be removed. Id.

[1530] Hanson 4/21/94 Fiske GJ at 122.

[1531] Hanson 9/29/95 GJ at 169-71; Hanson 4/21/94 Fiske GJ at 122.

[1532] Steiner 8/24/95 Int. at 11-12; Steiner 7/19/94 Senate Banking Comm. Depo. at 226.

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that Stephens had criticized the Clinton Administration, had a rough departure from his post as U.S. Attorney in the District of Columbia, and had considered seeking elective office.[1534] Steiner expressed his opinion that it was "incredible" that Stephens had been retained.[1535] He also had a vague memory that he asked Hanson whether the Madison Guaranty civil investigation could be delegated to Fiske, whom he thought would handle the matter in a nonpartisan fashion.[1536]

1. Eggleston Wrote a Memorandum for Ickes That May Have Been Transmitted to the First Lady about Madison Guaranty, the RTC, the FDIC, and the Rose Law Firm.

On February 28, 1994, Eggleston sent Ickes a memorandum on the subject of "Whitewater -- FDIC and RTC Rose Law Firm Issues."[1537] The memo discussed the findings made by the FDIC and the RTC in their reports dealing with possible conflicts of interest by the Rose Law Firm in its representation of Madison Guaranty. It reported that at the February 24 Senate Banking Committee hearing, the FDIC Chairman and Altman both said they would have their agencies' respective Inspectors General review the conflicts issue.[1538] It also discussed the possible sanctions that could be imposed on the firm in the event of a determination that it had a

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[1533] Steiner 7/19/94 Senate Banking Comm. Depo. at 226.

[1534] Id.

[1535] Id. at 366.

[1536] Id. at 228.

[1537] See Memo from W. Neil Eggleston, Associate Counsel to the President to Harold Ickes, Deputy Chief of Staff regarding Whitewater--FDIC and RTC Rose Law Firm Issues (Feb. 28, 1994) (Doc. No. 006-DC-00000014). Eggleston testified Ickes asked him to write his February 28 memo. Eggleston 5/4/96 Senate Banking Comm. Depo. at 47-48. Eggleston learned later (from information disclosed in the public hearings) that Ickes had apparently transmitted his memo to the First Lady. Eggleston 5/4/96 Senate Banking Comm. Depo. at 51-52.

[1538] See Memo from W. Neil Eggleston, Associate Counsel to the President to Harold Ickes, Deputy Chief of Staff regarding Whitewater--FDIC and RTC Rose Law Firm Issues (Feb. 28, 1994) (Doc. No. 006-DC-00000014).

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conflict.[1539] Eggleston also set forth the status of the Madison Guaranty civil investigation, and furnished information about Ryan and Kulka, the two who would be making Madison-related decisions in the wake of Altman's recusal.[1540] The FDIC and RTC reports were attached to the memo.[1541]

A memo dated March 1, 1994 from Ickes to Mrs. Clinton that transmitted copies of the Eggleston memo and its attachments was produced to the OIC.[1542] In addition to describing the attachments, the memo said:

> It is my understanding that shortly after Roger Altman met with Bernie Nussbaum, me and others concerning the RTC statute of limitations, he received an opinion from an ethics officer of the Treasury Department that he, as the acting head of the RTC, did not have to recuse himself from matters involving Rose/Madison Guaranty. I will confirm this situation.
>
> Please let me know if you want to discuss the attached.[1543]

Ickes was not sure if he sent the memo to Mrs. Clinton.[1544] He testified that his March 1 cover memo was not on letterhead, nor was it initialed, which indicated it may not have been sent.[1545]

[1539] See id.

[1540] See id.

[1541] See id.

[1542] See Memo from Harold Ickes, Deputy Chief of Staff, to the First Lady, regarding the Resolution Trust Corporation (Mar. 1, 1994) (Doc. No. 006-DC-00000013).

[1543] See id.

[1544] Ickes 9/5/95 GJ at 80-83. Mrs. Clinton vaguely remembered Ickes asking her if she wanted to know more about the RTC and the Rose Law Firm. H. Clinton 7/22/95 Depo. at 50. She said no. Id. Ickes may have had his memo in hand at the time or he may have tried to hand it to her, and she was not interested in it. Id. Ickes did not remember handing Mrs. Clinton the memo, asking her if she wanted to know more about Rose Law Firm and RTC issues, or her responding that she did not want to do so. Ickes 9/5/95 GJ at 84. She did not believe she looked through the memo until she was later prepared for questioning before the OIC. H. Clinton 7/22/95 Depo. at 50.

[1545] Ickes 9/5/95 GJ at 80-83.

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He did not remember asking Eggleston for the February 28 memo, but he was sure he did so given the contemporaneous interest about the Rose Law Firm's possible conflicts in its representation of Madison Guaranty.[1546] Ickes remembered asking Eggleston to write about the issues that were involved with the conflicts question, and the February 28 memo may have been the culmination of that effort.[1547]

The White House produced notes taken by Sherburne and Cheston about a summer 1994 discussion they had with Ickes's private counsel.[1548] Sherburne's notes read:

> Late Feb (2/26 or 27), H[arold]I[ckes] has conversation w/ WJC in which WJC asks lots of Q's re RTC procedures, whether [(in margins) whether Rose cld be held liable] & HRC & WJC exposed. HI asked N[eil]E[ggleston] to draft memo, which NE did in 12 hours. HI minor revisions. Sends to HRC 3/1. DR discussing.
>
> HRC asked HI a few questions. Think > received memo.[1549]

Cheston's notes read:

> 2/27-3/1 Memos.
> Late Feb, 2/26 or 27 prob'ly, HI -- conv w/ Pres -- had read WSJ article, -- asks sever qs re procedure RTC; can Rose, HRC, BC be held liable => HI asked NE to write memo.
>
> Did w/in 12 hrs.
>
> HI asked NE couple q's, follow up pts.
>
> 3/1 -> HRC only. No recall disc'g w/ her [(in margins) other than her asking cple

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[1546] Id.

[1547] Id.

[1548] See Sherburne handwritten notes (undated) (Doc. No. 442-DC-00006540-41) (the reproduction of the notes in the text contains expansions of abbreviations); see also, Cheston handwritten notes (undated) (Doc. No. 442-DC-00006543) (the reproduction of the notes in the text similarly contains some expansions of abbreviations).

[1549] Sherburne handwritten notes (undated) (Doc. No. 442-DC-00006540-41) (the reproduction of the notes in the text contains expansions of abbreviations).

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qs. Bef? Aft? Assume aft.] or sending to Pres.[1550]

When shown these notes, Ickes testified that although he remembered speaking with the President and Mrs. Clinton about the Madison Guaranty statute of limitations issue, he did not remember having the conversation with the President described in both Sherburne's and Cheston's notes about the potential liabilities of the President, the First Lady, or the Rose Law Firm.[1551] The notes did prompt Ickes to testify about the Eggleston memo that he knew that the FDIC and the RTC had reported about possible Rose Law Firm conflicts[1552] and that he had read an article or editorial in the Wall Street Journal thereafter in February.[1553] He acknowledged the President may have read the same piece, and then may have asked Ickes some questions about it, but Ickes testified he did not remember.[1554] He also acknowledged that "based on those reports and [the Wall Street Journal piece], I had asked Eggleston to write a memo."[1555]

Ickes also testified he did not remember if Eggleston prepared his February 28 memo in twelve hours, as the Sherburne/Cheston notes indicate.[1556] Nor did he remember making any revisions to the memo, but he may have.[1557] He testified again that he may have sent his March 1

[1550] Cheston handwritten notes (undated) (Doc. No. 442-DC-00006543) (the reproduction of the notes in the text similarly contains some expansions of abbreviations).

[1551] Senate Whitewater Comm. Hearing, supra note 1043, at 180-82 (Feb. 22, 1996) (testimony of H. Ickes).

[1552] Id. at 166, 180-82.

[1553] Id. at 180-82.

[1554] Id.

[1555] Id. at 180.

[1556] Id. at 166.

[1557] Id. at 167.

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memo to the First Lady, but he did not remember.[1558] Contrary to the indication contained in the Sherburne/Cheston notes, Ickes claimed not to remember the First Lady asking questions about the memo.[1559]

Ickes explained the differences between his testimony and the Sherburne/Cheston notes by stating that he was not present for their discussion with his counsel; therefore, he did not know what was said, whether what his attorney said was accurate, and whether Sherburne and Cheston accurately took down what was said.[1560] Similarly, Sherburne testified she thought Ickes's counsel was providing information she had collected from a variety of sources, and that she (Sherburne) did not know the source of counsel's information on these items.[1561]

2. White House Officials Discussed the Accuracy of Altman's Testimony.

As early as Friday, February 25, 1994 -- the same day the New York Times published its front-page article critical of the February 2 White House meeting -- but in any event by Monday, February 28, a series of meetings was held at the White House about the accuracy of Altman's February 24 Senate Banking Committee testimony.[1562] During that period, each of the following individuals participated in one or more of those meetings: Neil Eggleston, Harold Ickes, Joel Klein, Bruce Lindsey, Bernard Nussbaum, John Podesta, Clifford Sloan, and Todd Stern.[1563]

[1558] Id.

[1559] Id. at 168.

[1560] Id. at 185.

[1561] Id. at 187.

[1562] Klein 5/31/95 GJ at 71-73; Lindsey 3/24/94 Fiske GJ at 89-91; Eggleston 3/31/94 Fiske GJ at 103-105; Podesta 7/22/94 Senate Banking Comm. Depo. at 98; Stern 5/2/94 Fiske Int. at 3; Nussbaum 3/17/94 Fiske GJ at 131-32.

[1563] Sloan 7/21/94 Senate Banking Comm. Depo. at 105-06; Klein 5/31/95 GJ at 71-73; Lindsey 3/24/94 Fiske GJ at 89-90; Eggleston 3/31/94 Fiske GJ at 105-06; Podesta 7/22/94

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On the afternoon of March 1, 1994, a lengthy meeting about Altman's testimony was held in Podesta's office. In attendance were Podesta, Nussbaum, Eggleston, Sloan, and Klein.[1564] Lindsey was asked to join.[1565] The White House's concerns over Altman's testimony boiled down to three issues. First, Altman had testified before the Senate that he had requested the February 2 White House meeting with Nussbaum.[1566] Nussbaum noted he had merely been asked to come to the February 2 meeting -- in other words, it was not "his" meeting.[1567]

Second, there was concern that Altman's answers to Senator Bond's questions were inaccurate given the fall contacts. Sloan explained to the group what had happened at the September 29 and October 14 White House meetings.[1568] He also mentioned his fall 1993 telephone contacts with Hanson, but the discussion centered on the in-person meetings at the White House.[1569] After discussion, the group came to the conclusion that it did not know whether Altman knew about the fall meetings, but Hanson clearly did.[1570] The group concluded Altman's answers to Senator Bond's questions would have to be corrected by disclosing the fall

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Senate Banking Comm. Depo. at 98; Stern 5/2/94 Fiske Int. at 3; Nussbaum 3/17/94 Fiske GJ at 131-32.

[1564] Stern 5/2/95 Int. at 1; Klein 5/31/95 GJ at 85-86 (Klein also testified that Dee Dee Myers was present at attorney meetings); Podesta 7/22/94 Senate Banking Comm. Depo.at 103-06; Sloan 7/21/94 Senate Banking Comm. Depo. at 105-07.

[1565] Podesta 7/22/94 Senate Banking Comm. Depo. at 104 ("joined by Lindsey").

[1566] Altman 2/24/94 Senate Banking Comm. Depo at 149.

[1567] Nussbaum 7/8/94 RTC-OIG Int. at 28.

[1568] Sloan 4/7/94 Fiske GJ at 83.

[1569] Id. at 83-84; see Memo from Bruce Lindsey, White House Advisor, to File regarding Whitewater Development Corporation (Oct. 20, 1993) (Doc. No.008-DC-00000083).

[1570] Podesta 4/7/94 Fiske GJ at 33; Sloan 4/7/94 Fiske GJ at 83-84; Nussbaum 3/17/94 Fiske GJ at 133; Eggleston 3/31/94 Fiske GJ at 104-05; Klein 7/23/94 Senate Banking Comm. Depo. at 149.

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meetings.[1571]

The third item of concern was Altman's failure at the Senate hearings to disclose that he had discussed his possible recusal at the February 2 meeting. Altman had described that meeting to the Senate Committee as a "procedural briefing" and the group discussed whether Altman's description adequately covered recusal.[1572] It was determined that from a political perspective alone, Altman's failure to mention his recusal discussion could look as if he were trying to conceal it.[1573] The group decided to mention this point to Altman so he could decide whether to amend his testimony.[1574] The group determined Podesta would call Altman and raise the White House's concerns with his February 24 Senate testimony.[1575] During the March 1 meeting, Gearan spoke to Podesta outside of the meeting and told him that Ann Devroy, a reporter with the Washington Post, found out about the October 14 White House meeting and was asking about it.[1576]

a. Podesta and Altman Spoke about Altman's Testimony.

Late on March 1, 1994, Podesta spoke by telephone with Altman.[1577] Podesta told Altman

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[1571] Podesta 4/7/94 Fiske GJ at 33.

[1572] Id. at 31, 33-34.

[1573] Id. at 34.

[1574] Id.

[1575] Id. Although it was not clear that Podesta was the first to raise the point about how the February 2 meeting was set up, he certainly was the first to point out the issues of the fall contacts and recusal. Id. at 31.

[1576] Klein 5/31/95 GJ at 93, 95.

[1577] Podesta 4/7/94 Fiske GJ at 36. Altman remembered Podesta called the same afternoon the press started inquiring about the White House contacts. Altman 9/12/95 GJ at 174-75. Podesta reported that the White House was "concerned about the other two meetings." Altman 3/22/94 Fiske GJ at 21, 23. When Altman asked, "What other two meetings," Podesta answered, "Well, you know, the other two meetings." Altman 3/22/94 Fiske GJ at 23. Altman

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that the White House was reviewing his testimony, was concerned about a few items, and wanted Altman to think about supplementing his testimony.[1578] On the recusal issue, Altman said he wanted to have discussions with staff at the Treasury Department about his failure to mention the recusal portion of his February 2 meeting at the White House.[1579] He said he had intended to mention recusal at the hearings, but simply forgot and then did not get back to that point during the hearings.[1580] The two then discussed whether recusal was included within Altman's description of the February 2 briefing as "procedural"; Altman said he was comfortable with his prior testimony, but that he would think about it and talk with his staff.[1581]

When it came to the fall contacts issue, Podesta read Senator Bond's questions and Altman's answers from the transcript.[1582] Altman said his answer was accurate.[1583] Podesta responded he assumed it was and that Altman had no knowledge of any other contacts -- but that other people in Treasury may have further information that ought to be in the record.[1584] Altman seemed to understand there might have been meetings of which he was unaware and, therefore,

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then said he had no knowledge of any other meetings. Id. Altman testified there was a long pause in the discussion, which ended when Podesta asked, "You don't know about the other meetings?" Id. at 23. Altman testified it was during this conversation with Podesta that he first learned about additional meetings. Id. at 22. On the recusal issue, Altman did not remember Podesta raising it, but he had no reason to doubt him on that score. Altman 9/12/95 at 172-73.

[1578] Podesta 4/7/94 Fiske GJ at 36.

[1579] Id. at 37.

[1580] Id.

[1581] Id.

[1582] Id.

[1583] Id.

[1584] Id.

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had not disclosed.[1585] Altman said his testimony was accurate, and that he was not sure that he wanted to know more about other meetings.[1586] Podesta asked if Hanson had been at the hearings with Altman, and Altman confirmed she had.[1587] Podesta then said Altman should go over his testimony with Hanson, and consider supplementing the record.[1588] Podesta did not think he mentioned the September 29 and October 14 meetings in this discussion.[1589]

b. Podesta Reported to Other White House Officials on His Phone Call with Altman.

Podesta reported to a number of people in the White House about his telephone call with Altman. [1590] Nussbaum testified Podesta told him that Altman said he had no knowledge at the time of his testimony about other contacts.[1591] Nevertheless, Altman would advise the Senate.[1592] On recusal, Podesta reported Altman thought his testimony was accurate, but he would clarify any ambiguity when he testified in the future about this meeting.[1593]

[1585] Id.

[1586] Id. at 38.

[1587] Id.

[1588] Id.

[1589] Id. at 39. Podesta also mentioned the first issue the White House group had discussed at its meeting earlier on March 1 – that is, whether the February 2 meeting was set up by Nussbaum. Id. at 31. Podesta told the grand jury if Altman had not corrected his testimony about the fall contacts, the White House would have. Id. at 59. Nussbaum confirmed that point. Nussbaum 3/17/94 Fiske GJ at 138.

[1590] Podesta 4/7/94 Fiske GJ at 40-41.

[1591] Nussbaum 3/17/94 Fiske GJ at 134-35.

[1592] Id. at 135.

[1593] Nussbaum 3/17/94 Fiske GJ at 135; Eggleston's and Klein's memories of the briefing about Podesta's telephone call with Altman were consistent with Nussbaum's. Eggleston 3/31/94 Fiske GJ at 111; Klein 5/31/95 GJ at 99. Sloan testified Klein told him that when Podesta started to tell Altman the White House knew of prior meetings, Altman stopped him in mid-stride and said he did not know anything about that. Sloan 4/7/94 Fiske GJ at 86. Sloan did not know

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c. Altman Discussed Podesta's Call with Treasury Department Staff.

After his call with Podesta, Altman asked Steiner and Hanson if there were White House-Treasury meetings other than what he had disclosed.[1594] Both confirmed there were.[1595] Altman did not then ask them further about the meetings.[1596] Altman felt that his surprised reaction to Podesta, Steiner, and Hanson should have made it clear to them that he had not previously been aware of the fall contacts.[1597]

Hanson testified that on the afternoon of March 1,[1598] she was called to Altman's office and joined a number of people there.[1599] Altman raised the White House's concern about his answer to Senator Bond's question about meetings with the White House.[1600] Hanson remembered that when he found out about the two fall meetings, Altman asked, "I didn't know anything about these, did I?"[1601] Everyone at the meeting agreed he did not, including Hanson.[1602]

During this meeting in Altman's office (Hanson did not remember when), Altman was on

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whether anyone at the White House ever reminded anyone at Treasury about Sloan's telephone calls with Hanson in the fall of 1993. Id. at 84-85.

[1594] Altman 3/22/94 Fiske GJ at 23; Altman 9/12/95 GJ at 174.

[1595] Altman 3/22/94 Fiske GJ at 23; Altman 9/12/95 GJ at 174.

[1596] Altman 3/22/94 Fiske GJ at 23-24. Altman claimed press accounts were his source of any further information about the September 29 and October 14 meetings. Id. at 26.

[1597] Id. at 24. Altman did not believe, though, that there was a specific conversation with Steiner and Hanson about whether Altman had previously been told about the fall meetings. Id.

[1598] Hanson 9/29/95 GJ at 144-45; Hanson's testimony about this date varied over time; earlier, she had testified this meeting took place on March 2 or 3, 1994. Hanson 4/21/94 Fiske GJ at 116.

[1599] Hanson 9/29/95 GJ at 143-45.

[1600] Hanson 4/21/94 Fiske GJ at 116.

[1601] Hanson 9/29/95 GJ at 160.

[1602] Id.

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the telephone with Podesta, and Altman turned to Hanson.[1603] Altman said he understood from Podesta that Nussbaum remembered Hanson had spoken with him in the fall.[1604] Hanson responded, "Oh, yes, I spoke with him by telephone."[1605] Altman said Podesta told him Nussbaum remembered it was an in-person meeting after a meeting on Waco.[1606] Hanson testified that at that point, she got on the phone with Podesta.[1607] During their discussion, Hanson agreed it was an in-person meeting after the Waco meeting.[1608] Hanson also thought Podesta raised the October 14 meeting with Altman during this conversation.[1609] Hanson claimed not to remember what details were discussed on March 1 about the substance or circumstances of the October 14 meetings.[1610]

Hanson also remembered that during the meeting an opinion was offered that Altman's answers were alright because Senator Bond had asked about the RTC meeting with the White House -- not the Treasury Department.[1611] Hanson said although Altman's answers might technically be accurate, they would have to be supplemented because they did not address the

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[1603] Id. at 144.

[1604] Id. at 146.

[1605] Id.

[1606] Id.; Hanson 7/17/94 Senate Banking Comm. Depo. at 687.

[1607] Hanson 9/29/95 GJ at 146-47; Podesta did not remember speaking with Hanson. Podesta 6/7/95 GJ at 74. Nor did he recall that he discussed either of the fall meetings with Altman. Podesta 4/7/94 Fiske GJ at 39; Podesta 6/7/95 GJ at 71. He also did not remember any disagreement with Treasury about Nussbaum's version of the September 29 meeting. Id. at 93.

[1608] Hanson 9/29/95 GJ at 146-47; Hanson 7/17/94 Senate Banking Comm. Depo. at 687.

[1609] Hanson 9/29/95 GJ at 147.

[1610] Id.

[1611] Hanson 9/29/95 GJ at 150. She remembered Levy thought the answer did not need to be supplemented. Id.

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spirit of the questions.[1612]

d. Hanson Prepared Questions and Answers for Herself about the Fall Contacts.

On the night of March 1, 1994, Hanson tried to reconstruct the fall contacts to help respond to Senator Bond's questions.[1613] She drafted some questions and answers for herself, part of which dealt with her September 29, 1993 White House meeting with Nussbaum and Sloan:

Q: Who in Treasury or the RTC knew that you had this conversation?

A: I don't recall that I told anyone of the conversation.

Q: Did you tell Altman?

A: No.

Q: Did anyone ask you to have this conversation?

A: No.[1614]

Hanson thought those responses were accurate when she prepared them.[1615]

e. A Story about the Fall Meetings Was Published in the Washington Post.

On March 2, 1994, both the White House and Treasury learned the Washington Post intended to publish a story the next day about additional meetings with White House and Treasury participants. Podesta testified that on March 2, the Post asked the White House about the October 14 meeting.[1616] He called Steiner, hoping that Altman's Senate testimony would be

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[1612] Id. at 149-50.

[1613] Id. at 151.

[1614] See Questions and Answers drafted by Hanson at 2 (Mar. 1, 1994) (Doc. No. 005-DC-00000038); see also Hanson 9/29/95 GJ at 151-52.

[1615] Hanson 9/29/95 GJ at 152.

[1616] Podesta 5/7/94 Fiske GJ at 40.

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corrected before the story ran the next day.[1617] He thought that he did not actually reach Steiner, and asked either Eggleston or Stern to ensure that his concern was relayed to the Treasury Department.[1618] Later that night, Podesta learned Altman had spoken with Senator Riegle, Chairman of the Senate Banking Committee, and had sent a letter to the Committee.[1619]

Altman testified that on the same afternoon he received the call from Podesta, he found out that the press knew about the fall meetings and a story would be printed the next day.[1620] Post reporters called Treasury that day, described what they knew about the two meetings, and asked for comments.[1621] The press inquiry spurred a meeting at Treasury to discuss the agency's response; at all or parts of the meeting were Altman, Hanson, Gross, and Levy, Schloss and Nye.[1622]

According to Schloss, Altman said he had not known about those meetings, which Hanson did not contradict.[1623] Hanson said the fall meetings were in the context of press inquiries

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[1617] Id. Schloss remembered he learned on March 2 -- possibly from Steiner -- that the next day the Washington Post was going to publish a story about two additional meetings. Schloss 6/14/95 Int. at 10-11.

[1618] Podesta 4/7/94 Fiske GJ at 41.

[1619] Id.

[1620] Altman 9/12/95 GJ at 174-75.

[1621] Schloss 6/14/95 Int. at 10-11.

[1622] Id. at 11-12; Schloss 6/27/95 GJ at 50-52.

[1623] Schloss 6/14/95 Int. at 11-12; Schloss 6/27/95 GJ at 54-55. Hanson testified that on March 2, 1994, she was called into Altman's office and told that a story would appear in the press the next day about the two fall meetings. Hanson 9/29/95 GJ at 153-54. Hanson also testified that Steiner asked her to tell Secretary Bentsen that an article was going to be printed in the next day's Washington Post. Id. at 156. Hanson did meet with the Secretary, and told him that an article was coming out about two fall meetings. Id. Bentsen asked if he had known about the fall meetings, and Hanson responded she did not believe he had. Id.

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or anticipated inquiries.[1624] She said that after a White House meeting about the Waco incident,[1625] she had taken Nussbaum and/or Sloan aside and told them there were RTC criminal referrals mentioning the Clintons as witnesses; she told them that everything leaked from the RTC.[1626] She said she told the White House about the referrals because she wanted them to know there might be a problem.[1627] Schloss learned that the second fall meeting was prompted by an inquiry from Jeff Gerth of the New York Times.[1628] Schloss did not remember any discussion about Hanson's telephone calls with the White House during the fall of 1993.[1629]

f. Hanson Had Two Telephone Conversations with DeVore on March 2, 1994.

On March 2, Hanson had two telephone conversations with DeVore to ascertain what he remembered about the October 14 meeting.[1630] Steiner, Levy, Nye, and Schloss participated in the calls.[1631] Hanson took notes, which reflect DeVore saying, "Told about referral as a 'leak' & told him -- told the White House of inquiry."[1632] Steiner remembered DeVore said he had received a call on a Monday from a reporter about the October 14 meeting.[1633] He did not

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[1624] Schloss 6/14/95 Int. at 11; Schloss 6/27/95 at 50, 53.

[1625] Schloss 6/27/95 GJ at 50.

[1626] Id.

[1627] Id.

[1628] Id.

[1629] Id. at 62.

[1630] Hanson 9/29/95 GJ at 154. The second call was necessary because the first was interrupted. Id. at 154-55.

[1631] Hanson 7/17/94 Senate Banking Comm. Depo. at 690; Hanson 9/29/95 GJ at 154.

[1632] See Hanson handwritten notes (Mar. 2, 1994) (Doc. No. 007-DC-00000153) (about her conversation with DeVore).

[1633] Steiner 7/18/94 Senate Banking Comm. Depo. at 42-43.

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remember who set up the meeting, but he recalled Lindsey participated.[1634] DeVore said he learned at the meeting that the RTC's criminal referrals on Madison Guaranty were sent out the previous Friday.[1635] DeVore said he told the reporter the referrals had gone out and that he had discussed the matter with the White House.[1636] Steiner took notes of the conversation, which read, in part, "Jack DeVore also told reporter that he had also informed the White House."[1637]

DeVore recalled the March 2 conversation. He was told the lead story in the next day's Washington Post was going to be about the two fall meetings.[1638] They discussed their memories of the October 14 meeting.[1639] Hanson and Steiner had difficulty remembering details of the meeting, as did DeVore.[1640] DeVore remembered he had learned that the criminal referral had been sent.[1641] DeVore, Steiner, and Hanson tried to figure out whether Hanson had provided that information; Hanson did not believe she had done so.[1642]

g. Altman Wrote a Letter to Senator Riegle on March 2.

Altman testified that once he found out about the fall meetings, he became concerned about the accuracy of his Senate testimony, and wrote a letter to Senator Riegle stating that he

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[1634] Id. at 57.

[1635] Final Report of Robert B. Fiske Jr., Independent Counsel: In re: Madison Guaranty Savings & Loan Association at 18-19 (D.C. Cir. [Spec. Div.] Oct. 6, 1994)(under seal).

[1636] Steiner 8/25/95 GJ at 23.

[1637] See Steiner's handwritten notes (undated) (Doc. No. 007-DC-00003321).

[1638] DeVore 4/14/94 Fiske GJ at 49-50.

[1639] Id.

[1640] Id. at 50-51.

[1641] Id. at 51.

[1642] Id. DeVore also testified that on March 3, 1994, he told Secretary Bentsen (in response to a question from the Secretary, who was drafting a release about the contacts

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had just learned about the fall meetings with the White House.[1643] The letter disclosed the two fall White House meetings.[1644] Altman called Senator Riegle before sending the letter.[1645] Altman told the Senator that he had just learned about the fall meetings.[1646] Altman said the two agreed the hearings should be reopened.[1647] Altman also called Senator Bond and told him about the fall meetings.[1648]

Altman's March 2 letter read:

> I testified before your Committee last Thursday in connection with the semi-annual Oversight hearings on the RTC. There was a discussion, as you remember, of a meeting, which I had with representatives of the White House. As I indicated, no non-public information was provided at that meeting on any aspect of the Madison Guaranty matter.
>
> When Senator Bond asked me at that hearing whether any other communications had taken place between the RTC and the White House, my response was "not to my knowledge". I still have no knowledge that any such discussions occurred.
>
> But, I have learned today of two conversations which did take place between Treasury staff and White House personnel on this matter. My information is that both related to the handling of press inquiries.
>
> I would appreciate the opportunity to amend the record accordingly.[1649]

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revelations) that he (DeVore) had not briefed Secretary Bentsen about the October 14 meeting. DeVore 7/20/94 Senate Banking Comm. Depo. at 108-09.

[1643] Altman 3/22/94 Fiske GJ at 109; Altman 9/12/95 GJ at 178.

[1644] Altman 3/22/94 Fiske GJ at 109-10.

[1645] Altman 9/12/94 GJ at 174.

[1646] Id.

[1647] Id. at 174-75. That step was not taken, though, because the Independent Counsel became involved in the matter. Id. at 175; Altman 9/7/95 Int. at 26.

[1648] Altman 9/12/94 GJ at 175; Altman 3/22/94 Fiske GJ at 110-11.

[1649] See Letter from Roger C. Altman, then Interim CEO of the RTC, to the Honorable Donald W. Riegle Jr. (Mar. 2, 1994) (Doc. No. 001-DC-00000322). Hanson testified that a decision was made to notify Senator Riegle about the fall contacts before the public learned about them through the press. Hanson 9/29/95 GJ at 157-58. Hanson said during conversations at Treasury about the March 2 letter to Senator Riegle, there was no discussion about Altman's

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> Among other things, the March 2 letter expressed Altman's view that his February 2 discussion of his possible recusal did not implicate non-public information about substantive aspects of the Madison Guaranty matter, because he did not view recusal as a substantive issue.[1650]

About the discussion of the statute of limitations governing Madison-related civil claims, Altman felt they were public as of February 2 because, according to him, both Congress and news organizations already had received the same information.[1651] Altman felt that the fall meetings were not "substantive" because they were about press inquiries.[1652] Altman testified he understood the fall contacts both were about press inquiries regarding the referrals, and that he thought his March 2 letter accurately conveyed the information as he knew it, even though he did not mention in the letter that the White House was notified about the referrals.[1653]

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failure to mention that he had discussed his possible recusal at his February 2 White House meeting. Id. at 158. Nor did that topic arise in the preparation of any of Altman's later correction letters. Id. at 159. Hanson testified she never discussed with Altman his failure to mention the recusal point in his testimony or later letters of correction. Id. at 158-59. The reason offered was that the purpose of the March 2 correction letter was to notify Senator Riegle about the fall meetings before he learned about them from the press. Id. at 159. She thought that once he received and reviewed a transcript of his testimony, Altman would make a complete correction to his testimony, including an addition of the recusal point. Id. Further, there was no discussion on March 2 about whether the February 3, 1994 meeting or other contacts needed to be disclosed to the Committee. Id. at 159-60.

Steiner testified he reviewed the March 2 letter, and was concerned because the letter did not disclose his February 16 conversation with Stephanopoulos. Steiner 7/19/94 Senate Banking Comm. Depo. at 216-21. Steiner thought he communicated this concern to a Treasury attorney and was told that the purpose of this letter was not to provide all the contacts that had taken place but to amend what Altman remembered at this time. Id. at 219. Steiner also generally expressed his view that it would be better to wait until all the facts were gathered before sending a letter that might be incomplete and have to be supplemented. Id. at 218.

[1650] Altman 3/22/94 Fiske GJ at 110-11.

[1651] Id. at 111. Altman testified that The Washington Times had by February 2 already published a story about statute of limitations procedures. Id.

[1652] Altman 9/12/95 GJ at 180.

[1653] Id.

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h. Altman Wrote a Second Letter to Senator Riegle on March 3 Correcting His Testimony.

The Washington Post did publish a story on March 3, 1994 that revealed the fall White House-Treasury meetings.[1654] Later that day, Altman sent a second letter to Senator Riegle, which read as follows:

> As you know, I testified before your Committee last week in connection with the semi-annual Oversight hearings on the RTC. I was asked about any contacts, which I had with representatives of the White House on RTC matters and described a meeting, which I had.
>
> I would like to expand the records as follows. First, to the best of my recollection, no non-public information was provided on this case to representatives of the White House during that discussion. Second, it is my understanding that RTC staff had already had discussions with Senator D'Amato's staff on statute of limitations issues. Third, the Treasury General Counsel, who also attended the meeting, has advised me that before that meeting she sat down with this Department's designated Ethics Officer. She informed him of the purposes of the meeting and asked his view. He advised her that he saw no problem.
>
> In short, there was no discussion whatsoever on the substance of this case. That's because I never have had, nor have, any knowledge of the substance. I have received no documents in that regard, nor otherwise received any information on the substance of this matter.[1655]

Altman testified this letter was designed primarily to deal with the additional controversy that developed after publication of the March 3 Washington Post story.[1656] Altman wanted to rebut publicly certain points, conveying the following: (1) No non-public information was transmitted to the White House on February 2; (2) Senator D'Amato's staff had already received the same information given to the White House on February 2, and; (3) Dennis Foreman, the

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[1654] Ann Devroy & Susan Schmidt, Treasury Officials Told White House Status of S&L Probe, Wash. Post, Mar. 3, 1994, at A1.

[1655] See Letter from Roger Altman, then Interim CEO of the RTC, to the Honorable Donald W. Riegle, Jr. (Mar. 3, 1994) (Doc. No. 001-DC-00000323).

[1656] Altman 9/12/95 GJ at 186.

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Treasury Department's designated ethics officer, cleared the February 2 meeting in advance.[1657]

Hanson testified that on March 2, during a conversation with her private counsel, she first remembered Altman's request that she meet with Nussbaum about the criminal referrals.[1658] Hanson said she did not share this new recollection with Altman, nor did she attempt to add this information to the March 3 letter because that "wasn't the context of this letter."[1659]

i. Altman Wrote a Third Letter to Chairman Riegle.

On March 11 Altman sent Riegle the following letter:

> When I testified before your Committee twelve days ago, I was asked about contacts with White House personnel on any aspect of the Madison Guaranty matter. I cited one meeting, which addressed only generic RTC procedures, which would have applied to any case involving a statue [sic] of limitations. There was no substantive discussion of the case itself. Indeed, that would have been impossible because I know nothing of the substance of the case. I've never received a single document or a word of briefing on it.
>
> For obvious reasons, I have been reviewing all my files and other information, which could possibly pertain to this matter. I would like to amend the record to reflect one additional contact. One or two days after my meeting, there was a very brief discussion on the issue of recusal. There was no discussion whatsoever of the case itself. The conversation lasted five minutes or less and included me and

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[1657] Id. at 186-87. Altman had only recently learned the last point from Hanson. Id. at 187. Hanson testified she filled Altman in on the Foreman clearance the same afternoon as this letter was written, i.e., on March 3. Hanson testified this letter was drafted late on March 3, after a telephone conversation Altman had with Chairman Riegle, the substance of which Hanson could not remember. Hanson 9/29/95 GJ at 161. As the letter was being prepared, Hanson recalled she had spoken with Foreman before the February 2 White House meeting, and she gave that information to Altman for use in the letter. Id. Foreman testified he realized after reading the press and Altman's testimony that the talking points Hanson had asked him to review were for use during the February 2 meeting at the White House. Foreman 8/24/94 Senate Banking Comm. Depo. at 13-15. Thereafter, he related he had reviewed the talking points before the meeting. Foreman 6/27/94 Fiske GJ at 81. He took no part in drafting the March 3 letter, though, and he testified he would not have worded the letter as it was, because it implied there was a more involved discussion of the talking points than actually took place. Id. at 81-83.

[1658] Hanson 9/29/95 GJ at 164.

[1659] Id. at 164-65.

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Harold Ickes of the White House staff. There may have been one or two others in the room, but I cannot recall.

The purpose of both meetings was to provide notification.
At neither meeting did I seek advice, nor was it given.

I am sending this letter immediately to be sure that the record is as complete as possible.[1660]

Altman had originally prepared a draft of this letter on March 8, but that version was not sent.[1661] The final March 11 letter was essentially the same as the March 8 letter, except for the addition of the two underlined sentences.[1662] Altman testified he wrote this letter because the atmosphere had become so superheated he felt he should disclose even incidental meetings because even they could be treated as huge events.[1663] In his words, the threshold of what constituted a contact had become considerably lower than he originally thought.[1664] Altman testified he did not include his conversation with McLarty on February 2 because it was "trivial," a word he says was used by the White House to describe other contacts and possibly this contact, and a description that he agreed with.[1665] Altman testified he did not think about whether to

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[1660] Letter from Roger C. Altman, then Interim CEO of the RTC, to the Honorable Donald Riegle (Mar. 11, 1994) (Doc. No. 001-DC-00000489) (emphasis added). Altman and the Treasury Department produced only an unsigned version of this March 11 letter. A signed copy of the final letter appears in the published report of the Senate Banking Committee. The Semiannual Report of the Resolution Trust Corporation Thrift Depositor Protection Oversight Board – 1994: Hearing before the Committee on Banking, Housing, and Urban Affairs, 103d Cong., 2d Sess. 338 (1994).

[1661] Altman 3/22/94 Fiske GJ at 114; Altman 9/12/95 GJ at 188.

[1662] See Letter from Roger C. Altman, then Interim CEO of the RTC to the Honorable Donald Riegle (Mar. 8, 1994) (Doc. Nos. 001-DC-00000339); Letter from Roger C. Altman, then Interim CEO of the RTC to the Honorable Donald Riegle (Mar. 11, 1994) (Doc. No. 001-DC-00000489).

[1663] Altman 3/22/94 Fiske GJ at 112.

[1664] Altman 9/12/95 GJ at 190.

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disclose in this letter that recusal had also been a subject of the February 2 meeting.[1666] He said his purpose was simply to identify additional contacts.[1667]

Altman testified that at the February 2 meeting, he did not receive any "instructions" from Nussbaum.[1668] He also testified that he did not receive advice on recusal because he did not consider the discussion with the White House to be "advice."[1669] That is so because in his language "advice" is "something you seek and you receive and you weigh," and according to Altman, he did not seek advice at the February 2 meeting.[1670] Altman said because he did not go to the February 2 or 3 meetings seeking advice, he did not receive advice.[1671]

According to Altman, a few days before this letter was sent, he had a conversation with Gwen Ifill, then of the New York Times, in which he mentioned there was a conversation about recusal with the White House (referring to the February 3 meeting with Ickes), and he believes she printed this information.[1672] The only such story appeared on March 23, 1994, after Altman had sent this last letter to Senator Riegle and Altman had testified before the grand jury.[1673]

[1665] Altman 3/22/94 Fiske GJ at 98-99.

[1666] Altman 9/12/95 GJ at 190-91.

[1667] Id.

[1668] Id. at 97-98.

[1669] Id. at 98.

[1670] Id. at 98.

[1671] Id.

[1672] Altman 3/22/94 Fiske GJ at 112.

[1673] See Gwen Ifill, Inquiry to Cover Loan Association Against Clinton, N.Y. Times, Mar. 23, 1994, at A18.

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j. Altman Sent a Fourth and Final Letter of Correction on March 21.

On March 21 (the day before his grand jury appearance), Altman sent Senator Riegle his fourth and final letter correcting his testimony:

> I have been continuing an exhaustive review of all my files, phone logs and other information, with the assistance of Counsel. Every contact, regardless of significance, is being reviewed. As you may know, I generally attend meetings in the White House three or more times a day, and am on the telephone with White House staff even more often. It is difficult to recall every brief encounter. But, I would like to add to the record.
>
> In my testimony, I referred to one substantive communication, and, upon further review, that is still my view. The meeting at the White House on February 2 related to procedural issues, which pertain to any RTC claim or case. There was not, and could not have been, any discussion on the substance of the case. I never had any information on it, or any other RTC case.
>
> Before that meeting ended, I also informed those in attendance that I was weighing the issue of recusal. A few days after that meeting, I spoke with McLarty briefly on the telephone with the same message. As you know, on February 25, I decided to recuse myself and did so.
>
> The night before my February 24 testimony, I informed Ickes by phone that I would announce that I was stepping down from the RTC the next morning. That was, indeed, announced on schedule. Also, around the same time, I literally bumped into Nussbaum in a White House corridor. He told me that the Administration would soon be submitting its nominee for permanent RTC head.
>
> I have done my best to recall every communication with White House staff on anything, which could be connected to this matter. I hope that this is helpful.[1674]

Altman said he originally drafted this letter on March 15,[1675] but did not send that draft

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[1674] See Letter from Roger C. Altman, then Interim CEO of the RTC, to the Honorable Donald Riegle (Mar. 21, 1994) (Doc. Nos. 001-DC-00000496 through 97).

[1675] See id. Altman's original March 15 draft of this letter reflects two important differences. First, in the March 15 letter after the disclosure that recusal was discussed at both the February 2 and 3 meetings, Altman said, "No advice was sought." This language is deleted from the final March 21 letter. Second, the March 15 draft does not include information about the conversation with Nussbaum.

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because he was still gathering information with his lawyer.[1676] Altman testified this letter reflected his best effort to "put every last conceivable encounter or contact on the record," and "every last trivial contact that I've had."[1677] Altman testified that a day or two before this letter was sent, he was for the first time told (by private counsel) there were concerns about his failure to identify recusal as a subject of discussion at the February 2 meeting.[1678]

IV. ANALYSIS

The contacts between Treasury Department officials and White House officials about the RTC's criminal referrals raised the serious question of whether anyone took any action with the intent to influence unlawfully the RTC's investigation of Madison Guaranty in violation of 18 U.S.C. § 1505. The relevant provisions of 18 U.S.C. § 1505 provide:

> Whoever corruptly, or by any threatening letter or communication influences, obstructs, or impedes or endeavors to influence, obstruct, or impede the due and proper administration of the law under which any pending proceeding is being had before any department or agency of the United States . . . shall be fined under this title or imprisoned not more than five years, or both.

The evidence was insufficient to prove beyond a reasonable doubt that anyone violated 18 U.S.C. § 1505 in connection with the contacts relating to 1) possible press inquiries about the RTC referrals; 2) statute of limitations issues or Altman's recusal; or 3) the retention of Jay Stephens.

The evidence showed the initial contacts were about press inquiries. The September 29 contact was initiated by the Treasury Department and the testimony is consistent that the purpose was to warn the White House of possible disclosure of the referrals and the Clintons' alleged

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[1676] Altman 3/22/94 Fiske GJ at 115.

[1677] Id. at 116.

[1678] Altman 9/12/95 GJ at 193.

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involvement. There was no evidence that anyone took any further action to influence the referrals.

Similarly, the evidence about the meeting on October 14 shows that the meeting was called at the request of the Treasury Department and the discussion was about the handling of press inquiries. There was no evidence that anyone at this meeting made any communication or took any subsequent action that evidenced a corrupt intent to influence the RTC investigation.

With respect to all contacts about the statute of limitations issue or Altman's recusal, the evidence was insufficient to prove that anyone took any action with a corrupt intent to influence the RTC's investigation. The February 2 meeting simply did not show that anyone's conduct constituted an attempt to knowingly obstruct the investigation. There was no evidence that Altman's disclosure that the investigation would not be complete before the expiration of the statute of limitations to Ickes was part of a deliberate plan to obstruct the investigation; there was no evidence that anyone took any action using that information to obstruct the investigation. Otherwise, information about the RTC procedures was generally public and were provided to Congress.

With respect to Altman's recusal, White House officials, especially Bernard Nussbaum, told Altman of their desire that he not recuse himself. After those communications, Altman decided not to recuse himself. The Independent Counsel concluded these actions clearly had an impact on Altman's decision, and thereby influenced the investigation.

That evidence, however, was insufficient to prove that anyone possessed the requisite corrupt intent to impede the investigation. The evidence did not show that any of the communications were threatening or coercive. The testimony about the communications reflected Altman was repeatedly told that the decision was his. The evidence reflected some

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thought that recusal would reflect political weakness in the face of public criticism.

In addition, the evidence about the decision itself not to recuse does not reflect any intention to obstruct justice. There is no evidence that Altman involved himself in the Madison Guaranty matter at all. He announced he was "de facto" recused, anyway, and that he would follow the recommendations of RTC senior officials. When asked about whether private counsel would receive a briefing on the statute of limitations issue, he followed the advice of Kulka, without hesitation. There is simply no evidence that Altman had any matter relating to Madison Guaranty pending before him at the time of these communications or that he took any action on the Madison Guaranty matter.

With respect to the retention of Jay Stephens, the evidence of George Stephanopoulos's contacts with Treasury Department officials was insufficient to prove an attempt to obstruct justice. The evidence about Stephanopoulos's telephone conversations with Altman and Steiner failed to reflect a corrupt intent to influence the RTC's investigation. Both Altman and Steiner testified that Stephanopoulos's communications were motivated by his concern that Jay Stephens might harbor a political bias and be overly zealous in pursuing civil claims against the Clintons. Regardless of the merits of that concern, it is certainly a plausible, noncriminal motivation. For that reason alone, the evidence was insufficient to prove that Stephanopoulos's contacts about the retention of Jay Stephens constituted an attempt to obstruct justice.

While this Office was considering the evidence of Altman's statements to Congress, the Supreme Court issued its decision in Hubbard v. United States, 514 U.S. 695 (1995), effectively barring prosecutions for unsworn false statements to Congress under the provisions of 18 U.S.C.

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§ 1001 in effect at the time.[1679] Because such a prosecution was barred as a matter of law, this Final Report expresses no conclusions about whether Altman's statements to Congress were, in fact, false. Having concluded Altman could not be prosecuted under 18 U.S.C. § 1001 for any unsworn statements to Congress that may have been false, the Independent Counsel declined to prosecute Altman.

V. SUMMARY CONCLUSION

The relationship between Altman and the President raised suspicions with the press, the public, and the Congress about the potential for interference with the routine handling of the RTC's criminal referrals alleging involvement by the Clintons. The contacts between the White House and the Treasury Department -- especially Nussbaum's discussions with Altman about recusal and his expressions of concern about the effect of recusal -- were unusual and only heightened those suspicions. Altman's failure to tell the Congress about the recusal discussions and the other contacts with the White House reinforced these concerns. Similarly, the evidence about Stephanopoulos's concerns over the RTC's retention of Jay Stephens suggested the potential for undue interference in the referrals' handling.

The conduct of these officials necessitated a full investigation of these matters not only by this Office but also by regulatory Independent Counsel Fiske. Only after a complete review of the evidence could the concerns finally be put to rest. In the end, the evidence simply was

---

[1679] The relevant provisions of 18 U.S.C. § 1001 provided at that time: "Whoever, in any matter within the jurisdiction of any department or agency of the United States, knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations . . . shall be fined not more than $10,000 or imprisoned not more than five years, or both." 18 U.S.C § 1001 (1993); see Oakar v. United States, 111 F.3d 146, 153 (D.C. Cir. 1997) (specifically holding the decision in Hubbard

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insufficient to prove that any of the contacts or any related conduct constituted a crime. The Independent Counsel declined prosecution of anyone in connection with contacts between White House and Treasury officials about the RTC referrals. This matter is now closed.

---

barred prosecution for false statements to Congress under 18 U.S.C. § 1001 because Congress is not a department or agency of the United States under the statute).

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APPENDIX

RTC EMPLOYEES PLACED ON ADMINISTRATIVE LEAVE

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The Independent Counsel also investigated the allegation that three of the RTC's criminal investigators investigating Madison Guaranty, Senior RTC Investigator L. Jean Lewis, RTC Supervisory Investigator Lee Ausen, and RTC Director of Field Investigations L. Richard Iorio,[1] were put on administrative leave in an attempt to obstruct their investigation. On August 12, 1994, the three were notified by Thomas L. Hindes, RTC Assistant General Counsel in Washington, D.C., that

> [y]ou are hereby placed on Administrative Leave to be effective immediately upon receipt on August 15, 1994. You will return to active duty status effective the beginning of your tour of duty on August 29, 1994. . . . You are restricted from all RTC offices including all locations in the Kansas City Metropolitan area.[2]

After the two week period, RTC Chief Executive Officer Jack Ryan concluded the political fallout from placing the three on leave was problematic enough that all three were brought back to work at the end of the two weeks, rejecting advice to take any additional disciplinary action against Ms. Lewis and Mr. Iorio.[3]

---

[1] Ms. Lewis was the RTC/Kansas City Office's primary criminal investigator on Madison Guaranty, Mr. Ausen was her immediate supervisor in charge of criminal investigations, and Mr. Iorio was Ausen's superior in charge of all investigations. Hindes 1/19/95 GJ at 5, 13.

[2] See Memorandum from Thomas L. Hindes, RTC Assistant General Counsel, to L. Jean Lewis, RTC Senior Investigator (Aug. 12, 1994); Memorandum from Thomas L. Hindes, RTC Assistant General Counsel, to L. Richard Iorio, RTC Director of Field Investigations (Aug. 12, 1994); see also Ausen 11/16/94 FBI Int. at 1 (describing being called into his supervisor's office and handed the letter placing him on leave, though the supervisor said "that he didn't know any of the circumstances that led to it"). The employees were never told what the allegations were that led to their administrative leave by Mr. Hindes or anyone acting at his direction. Hindes 1/19/95 GJ at 76.

[3] Yanda 11/15/94 Int. at 12-13; Mendelsohn 10/13/94 Int. at 5 & Ms. Mendelsohn's attached notes of August 26, 1994 Meeting of RTC Officials at 001662 (noting the RTC's investigation did not find cause to discipline Mr. Ausen, but that Mr. Ryan was told to keep Mr. Iorio and Ms. Lewis on administrative leave pending further review by the RTC's Inspector General); Tomback 1/24/95 GJ at 47-48; Kulka 1/26/95 GJ at 28, 44-45.

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In August 1995, several members of Congress wrote to Attorney General Janet Reno and told her about their belief that

> [i]t is clear from this week's testimony of RTC employees Jean Lewis, Lee Ausen, and Richard Iorio before the [House Banking and Financial Services] Committee, that administrative leave was imposed on these individuals by Mr. Tom Hindes of the RTC, in violation of government employment law, for the purpose of impeding their investigation into check-kiting, and bank fraud in connection with the review of Madison Guaranty Savings & Loan Association and its relationship to Whitewater Development Corporation.[4]

On August 21, 1995, Assistant Attorney General Jo Ann Harris told the Office of Independent Counsel that

> [t]he Attorney General recently received the enclosed letters and materials from Congressmen Bob Barr and Jon Fox. In their letters, the Congressmen alleged that Thomas L. Hindes, Assistant General Counsel of the Resolution Trust Corporation, and other federal officials may have obstructed justice in violation of federal law by attempting to impede an investigation relating to Madison Guaranty Savings & Loan Association and its relationship to Whitewater Development Corporation. Since this matter appears to fall within your jurisdictional mandate, I am referring the letters and materials to you for whatever action you deem appropriate.[5]

The Independent Counsel conducted a thorough investigation of this allegation, and concluded that the evidence was insufficient to prove that Mr. Hindes or any other person committed any federal criminal violations relating to Ms. Lewis or Messrs. Ausen and Iorio having been put on administrative leave.

The RTC officials responsible for the decision consistently said the three were put on leave for two weeks so that the RTC could investigate (1) whether Ms. Lewis, Mr. Ausen and particularly Mr. Iorio were functioning appropriately with those above them in the RTC chain of

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[4] Letter from Rep. Bob Barr to Attorney General Janet Reno (Aug. 9, 1995); see also Letter from Rep. Jon D. Fox to Attorney General Janet Reno (Aug. 10, 1995) (making same allegation).

[5] Letter from Assistant Attorney General Jo Ann Harris to Independent Counsel Kenneth W. Starr (Aug. 21, 1995).

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command;[6] (2) Ms. Lewis's covert taping of a conversation with RTC employee April Breslaw, which Ms. Lewis provided to Congressman James Leach without Ms. Breslaw's or the RTC's knowledge or permission;[7] and (3) Ms. Lewis's unilateral transmission of internal RTC investigative documents relating to Madison Guaranty to Congressman James Leach, despite the RTC's prior institutional determination that Congressman Leach was not legally entitled to receive the documents he had requested.[8]

The Independent Counsel's investigation found no evidence indicating that the three employees were put on leave for reasons other than those relied upon by the RTC as described above. At the very least, the evidence, including evidence given by the employees themselves, was insufficient to establish that they were put on leave to obstruct the Madison Guaranty investigation. These employees were no longer investigating Madison Guaranty when the leave occurred. Mr. Iorio told his employees on August 9, 1994 that "[a]ll investigations concerning Madison to be undertaken by this office are finished" and "[t]here will be no new efforts undertaken by this office."[9] Mr. Iorio acknowledged there was longstanding working tension between himself and the RTC official responsible for oversight of his group's investigative

---

[6] See Hindes 1/19/95 GJ at 17-20, 28-30, 43; Yanda 11/15/94 Int. at 1-4, 6, 10; Mendelsohn 10/13/94 Int. at 7-8; Tomback 2/2/95 GJ at 14; Kulka 1/26/95 GJ at 11-12, 17, 48, 88, 91.

[7] Hindes 1/19/95 GJ at 20-21, 62; Yanda 11/15/94 Int. at 6; Mendelsohn 10/13/94 Int. at 7; Tomback 1/24/95 GJ at 38-39; Kulka 1/26/95 GJ at 11.

[8] Hindes 1/19/95 GJ at 21-24, 55; Mendelsohn 10/13/94 Int. at 7; Kulka 1/26/95 GJ at 11, 22, 24-26; Kulka 1/26/95 GJ at 53-57 (explaining the RTC had obtained a court ruling that Congressman Leach, as a member of the House minority and otherwise lacking Committee approval, had only the ability of a private citizen to obtain internal RTC investigative documents, and that Ms. Lewis's provision to Rep. Leach of documents already denied him by the RTC under the Freedom of Information Act had harmed the RTC's investigation).

[9] E-Mail from L. Richard Iorio to Pat S. Robinson at 2 (Aug. 9, 1994) (provided to the Independent Counsel by Mr. Iorio and attached to the transcription of his interview, Iorio 9/22/94 Int.).

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activities.[10] Mr. Iorio agreed this supervisor's general dislike for all investigations was a contributing factor in placing him and the others on administrative leave.[11]

Ms. Lewis admitted that she gave the Madison Guaranty investigative documents to Rep. Leach, and asked "that he keep them confidential."[12] Ms. Lewis said "[s]he was surprised when he mentioned them on the floor of Congress. Somewhat upset, she called [Rep. Leach] and he said he must have misunderstood her intent in providing the documents to him."[13] Mr. Iorio said when he learned Ms. Lewis had provided documents to Mr. Leach, he had considered taking disciplinary action against her, confirming his awareness that she had violated RTC regulations.[14] Lacking sufficient evidence indicating an intent to obstruct justice, the Independent Counsel declined to pursue this allegation further.

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[10] Iorio 12/21/94 Int. at 6.

[11] Id. at 6.

[12] Lewis 11/16/94 Int. at 7.

[13] Id. at 7.

[14] Iorio 9/21/94 Int. at 3; Iorio 12/21/94 Int. at 5 (acknowledging that Ms. Lewis had violated RTC procedures in releasing RTC investigative documents to Congressman Leach); Ausen 11/16/94 Int. at 4 (detailing that Ms. Lewis's admission to himself and Mr. Iorio that she had unilaterally provided materials to Congressman Leach, though Mr. Ausen determined that whether the matter should be reported to RTC management was Mr. Iorio's decision).

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United States Court of Appeals
For the District of Columbia Circuit

Division for the Purpose of
Appointing Independent Counsels
Division No. 94–1

Final Report of the Independent Counsel

In Re: Madison Guaranty Savings & Loan Association

Volume V: Comments

Robert W. Ray
Independent Counsel

Received January 5, 2001
Filed March 2, 2001
Released March 20, 2002
Washington, D.C.

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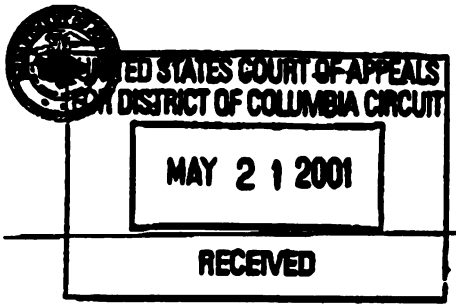
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ROGER C. ADAMS

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U. S. Department of Justice

Pardon Attorney

Washington, D.C. 20530

United States Court of Appeals
For the District of Columbia Circuit

MAY 1 4 2001 FILED MAY 2 1 2001

Special Division

Mr. Mark J. Langer, Clerk
United States Court of Appeals
for the District of Columbia Circuit
Washington, D.C. 20001-2866

Dear Mr. Langer:

Pursuant to the Court's authorization, I have examined certain portions of the report in Division No. 94-1, *(In Re: Madison Guaranty Savings & Loan Association)*. I would submit the following factual information in connection with a statement in Vol. I, Appendix 5, Part IX, p. xcvii concerning a letter dated December 21, 2000, from Independent Counsel Robert W. Ray to Deputy Attorney General Eric Holder. The report states that the letter from Mr. Ray requests that the Independent Counsel be informed "if any clemency requests were presented, formally or informally for review by the Office of the Pardon Attorney or the Deputy Attorney General involving Webster Hubbell, Susan McDougal, or any other persons prosecuted by their office."

I can state that I never received a copy of such a letter, and was not aware of its contents until I read the report on May 2, 2001. If I had known of the request, I would have informed the Independent Counsel that, on December 21, 2000, there was pending in the Office of the Pardon Attorney a petition for pardon after completion of sentence from Robert W. Palmer. Although President Clinton granted pardons to a number of other persons prosecuted by the Independent Counsel, Mr. Palmer was the only person who applied through the Office of the Pardon Attorney. His petition arrived in my office on September 8, 2000, and was being processed at the time then-President Clinton granted him a pardon on January 20, 2001. My office did not seek the views of the Independent Counsel in Mr. Palmer's case. Obtaining the views of the office that prosecuted a case is routinely done in all cases in which we are considering making a recommendation for clemency and in a number of other cases as well, but time did not permit us to do so in Mr. Palmer's case. I would also note that President Clinton acted on a number of such cases in which the clemency recipient had applied through the Office of the Pardon Attorney but time did not permit our normal investigation or the preparation of a report and recommendation for the White House.

Sincerely,

Roger C. Adams

Roger C. Adams
Pardon Attorney

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MICHAEL BERMAN

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United States Court of Appeals
For the District of Columbia Circuit
FILED JUL 6 2001
Special Division

July 7, 2001

CONFIDENTIAL – UNDER SEAL

BY HAND

Marilyn Sargent
Chief Deputy Clerk
United States Court of Appeals
District of Columbia Circuit
333 Constitution Avenue, N.W.
Washington, DC 20001-2866

Re: In re Madison Guaranty Savings & Loan Ass'n (In re Madison Guaranty Savings & Loan Ass'n) – Div. No. 94-1

Dear Ms. Sargent:

We represent Michael Berman, an individual whose name appears in the Independent Counsel's Final Report in the above-referenced matter. Pursuant to this Court's April 27, 2001 Order Under Seal (the "Order"), undersigned counsel reviewed those portions of the Independent Counsel's Final Report in which Mr. Berman's name appeared.

The Order states that, for the purposes set forth in 28 U.S.C. § 594(h)(2), Mr. Berman and other individuals named in the report shall, by October 24, 2001, submit to the Clerk of the Court any written comments or factual information that he or she requests to be included in an appendix to the Final Report. Accordingly, Mr. Berman hereby respectfully requests that the comments attached hereto as Exhibit A be included in an appendix to the Final Report.

Please do not hesitate to call me if you have any questions concerning this request. Thank you for your assistance in this matter.

Respectfully submitted,

Alexander J. Lathrop
D.C. Bar No. 471035

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Exhibit A

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STATEMENT OF MICHAEL BERMAN:

In Volume III, Part C entitled "Webster L. Hubbell's Billing Practices and Tax Filings," at page 27, the Final Report states that "One of those **contracted** through Phillips [concerning potential employment for Mr. Hubbell], [was] Michael Berman . . ." (emphasis added). No contract existed between Mr. Berman and Mr. Phillips or Mr. Hubbell. The word "contracted" wrongly implies that Mr. Berman made a promise to either Mr. Phillips or Mr. Hubbell to assist Mr. Hubbell in finding employment in return for consideration. Because no such contractual arrangement existed, we believe that the above-referenced portion of the Final Report contains a typographical error, and should be corrected to read "One of those contacted through Phillips, Michael Berman, ..."

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ERSKINE BOWLES

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United States Court of Appeals
For the District of Columbia Circuit

FILED JUL 9 2001

Special Division

July 9, 2001

UNDER SEAL

The Honorable Marilyn Sargent
Chief Deputy Clerk
United States Court of Appeals
District of Columbia Circuit
Washington, D.C. 20001-2866

Re: Response of Erskine Bowles to Report of Independent Counsel Ray On Whitewater Investigation; *In Re: Madison Guaranty Savings & Loan Association (In re: Madison Guaranty Savings & Loan Association)*, Division No. 94-1

Dear Ms. Sargent:

This is the response of Erskine Bowles to the excerpts of the Report of Independent Counsel Ray concerning the Whitewater investigation which have been reviewed but not copied by his counsel.

The excerpts relate to events following the resignation in April 1994, of Mr. Webster L. Hubbell from the Department of Justice.

Mr. Bowles was at that time serving as Chairman of the Small Business Administration.

The excerpts state that Mr. Bowles was part of a joint effort to obtain consulting employment positions for Mr. Hubbell. More specifically, the report states:

> As a result of the efforts of Mack McLarty, Erskine Bowles, Truman Arnold, Vernon Jordan and others, Hubbell was hired as a consultant by seventeen individuals and organizations that

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> were Clinton supporters. Hubbell was paid in excess of $500,000 in largely unspecified 'consulting fees' during 1994-95. Insufficient evidence exists to prove these payments were intended to affect Hubbell's cooperation with the Independent Counsel. *See* to the same effect Volume III, Part E, p. 4.

The above portion of the Report is inaccurate as to Mr. Bowles. No consultant was hired "[a]s a result of the efforts of ... Erskine Bowles." Furthermore, at no time did Mr. Bowles join in or coordinate with any person in the Administration or friend of the President to help Mr. Hubbell obtain post-resignation employment. To the extent the Report states or suggests to the contrary, it is wrong.

Because Mr. Bowles felt sympathy for "a guy who was down," he did contact three people to try to assist Mr. Hubbell find work. None of the three hired Mr. Hubbell or assisted him in finding employment. Mr. Bowles, moreover, acted on his own. He did not even discuss, let alone coordinate, his own individual efforts, with anyone.

This is not to suggest that any persons who did help Mr. Hubbell find employment, whether acting on their own or jointly, did anything at all inappropriate. Mr. Bowles certainly has no reason at all to believe that they did. The point is, however, Mr. Bowles was not part of any joint effort to assist Mr. Hubbell, and the good faith effort on his own initiative he made to help Mr. Hubbell, long before he had any awareness of Mr. Hubbell's wrongdoing that led to his plea of guilty, never resulted in employment for Mr. Hubbell.

Sincerely,

Earl J. Silbert
Counsel for Erskine Bowles

EJS/gz

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HERBY BRANSCUM, JR., BILLIE JO BRANSCUM, BETH BRANSCUM, JAMES BRANSCUM AND JOHN C. BRANSCUM

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United States Court of Appeals
For the District of Columbia Circuit

FILED OCT 12 2001

Special Division

October 11, 2001

Via Federal Express **Under Seal**

Mr. Mark J. Langer, Clerk
United States Court of Appeals
District of Columbia Circuit
333 Constitution Avenue, Room 5423
Washington, D.C. 20001

Re: *Comments and Responsive Statements to the Madison Guaranty/Whitewater Final Report Regarding Herby Branscum, Jr., Billie Jo Branscum, Beth Branscum, James Branscum, and John C. Branscum*

Dear Mr. Langer:

Enclosed please find the Comments and Responsive Statements to the Madison Guaranty/Whitewater Final Report Regarding Herby Branscum, Jr., Billie Jo Branscum, Beth Branscum, James Branscum, and John C. Branscum.

Should you have any questions regarding the above, please give me a call.

Sincerely,

Dan C. Guthrie, Jr.

DCG:cjr
Enclosure

cc: Mr. Herby Branscum, Jr.
(w/encl.)

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COMMENTS AND RESPONSIVE STATEMENTS TO THE MADISON GUARANTY/WHITEWATER FINAL REPORT REGARDING HERBY BRANSCUM, JR., BILLIE JO BRANSCUM, BETH BRANSCUM, JAMES BRANSCUM, AND JOHN C. BRANSCUM

Campaign Contributions

The Office of Independent Counsel in its report on Madison Guaranty/Whitewater Final Report ("Report") goes to great lengths to detail gifts made by Herby Branscum, Jr. ("Branscum") to his children who later made contributions to the Clinton Gubernatorial Campaign and to the 1992 Clinton Presidential Campaign. However, the report does not claim nor did the prosecutor prove that these gifts made by Branscum to others were made specifically for the purpose of making campaign contributions.

The report further does not state or allege that any laws were broken by Branscum by making such gifts and, in fact, no laws were broken. The report fails to mention that proof at trial showed that this was a very common practice in Arkansas that had been engaged in by both Republicans and Democrats and that the children and relatives of many others contributed not only to the Clinton Gubernatorial Campaign but to his opponent's campaign as well.

The report fails to note that many other gifts of money were given by Branscum to his children at different times throughout the period referred to by the report. During this timeframe, all of Branscum's children were approximately college age. Branscum's financial transactions were replete with numerous transfers of money given to them for college and for other activities all of which were completely within the bounds of the law.

Despite the fact that the prosecution devoted much time to this area during a six week trial, it totally failed to prove to the jury that there was any illegal activity on the part of Branscum or his family members or others with whom he was associated for making these campaign contributions.

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The report attempts to imply, as did the prosecution at trial, that there was some connection between the political contributions and the appointment of Branscum to the Arkansas Highway Commission. There was absolutely no proof to support such an implication. All of the proof presented showed clearly that although Branscum had been a long time supporter of Governor Clinton and had contributed to his campaign, he had been appointed to various positions of authority by other Arkansas governors. Most importantly, President Clinton testified that Branscum was considered by him to be the best qualified candidate for the appointment.

Currency Transaction Reports

Counts 2 and 11 in the indictment brought by Kenneth Starr against Branscum charged him with directing others to withhold Currency Transaction Reports ("CTRs") for two cash withdrawals from the Perry County Bank by the Clinton Campaign. The jury returned a verdict of not guilty on both of those counts.

The proof at the trial and the evidence gained by the prosecution through the grand jury subpoenas showed clearly that although Branscum was a board member of the Perry County Bank and owned an interest in said Bank, he was not present at the Bank on a daily basis. There was no evidence that he had any knowledge of or day-to-day connection with such activities as Currency Transaction Reports. In this particular case there was no evidence that Branscum had any knowledge of the two cash withdrawals made by the Clinton Campaign or whether the Currency Transaction Reports were completed and mailed to the proper agency.

Civil Penalties

The report attempts to highlight the fact that Branscum's Professional Association was required to pay certain civil penalties for failure to comply with the District Court's Order to furnish certain evidence pursuant to a grand jury subpoena *duces tecum*. Branscum's position in this regard was quite clear in that he felt that OIC

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did not have the proper authority to be investigating him or his professional association and that their activities had no factual connection with or relevance to the Madison Guaranty/Whitewater matter in any manner whatsoever. Even to this day, OIC has wholly failed to demonstrate how the investigation and prosecution of Branscum was factually related in any manner to its investigation of Madison Guaranty/Whitewater. Branscum had absolutely nothing to do with Madison Guaranty or Whitewater. The only conclusion that can be drawn is that the charges against Branscum were an attempt to try to coerce him or co-defendant Robert M. Hill to become witnesses for the Independent Counsel.

In addition to challenging OIC's powers in this regard, Branscum also raised the issue of Independent Counsel Kenneth Starr's basic authority since Starr had not filed an oath of office which was clearly required by the law. This oath requires appointed government officials to swear that neither they nor anyone on their behalf had paid any consideration for the appointment to their office. The effect of an official's failure to execute this oath had never before been decided and dealt with the core issue of whether Starr had any authority to cause the grand jury subpoena in question to be issued. Kenneth Starr stated at oral arguments that he finally executed this required oath only days before appearing before the Eight Circuit. Although the statute clearly states that an official cannot be compensated prior to taking this oath, there is no knowledge as to whether Starr retained his compensation for the time period prior to his taking the oath.

In order to obtain appellate review of these important issues, it was necessary that Herby Branscum, Jr. P.A., be placed in jeopardy to have the proper procedural grounds for such an appeal. This appeal was taken to the Eighth Circuit Court of Appeals which affirmed the District Court. At that point, the subpoenaed documents

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were turned over to the grand jury. However, because of these issues Branscum sought an appeal to the United States Supreme Court but certiorari was denied.

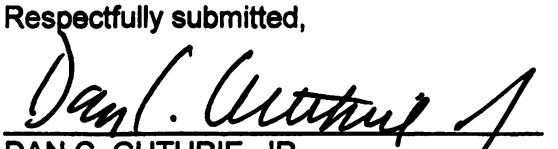
In the report made in this Court, OIC attempts to point to the civil penalties and the appeal of the lower court order as "contumacious conduct" on his part that allegedly delayed OIC's investigation. The evidence sought by OIC through the subpoena in question was evidence that it could have easily gained through other subpoenas and in fact was evidence which was not even used in the trial of this matter. The claim of the OIC regarding "contumacious conduct" and delay is totally without merit and is an attempt by the report to improperly and unfairly characterize Branscum's actions since the report does not show how the appeal on Branscum's part in any way delayed its investigation. By this statement, it appears that the OIC is attempting to advance the proposition that an American citizen is not entitled to have an attorney defend him and pursue an appeal on legitimate legal issues, most of which had never been decided before.

Summary and Conclusion

After two years of grand jury subpoenas and investigation, testimony of various bank employees, family members and others before the grand jury and a six-week trial before a federal jury in Little Rock, Arkansas, it is evident that the OIC's charges against Branscum were without merit, were totally groundless and should never have been brought. Branscum always maintained his innocence. He pursued a course that showed Independent Counsel could not prove these charges in a court of law as was demonstrated by the results: not guilty verdicts on four charges with the remaining seven charges dismissed. Great care and extreme caution should be pursued in the future to insure that other innocent citizens of this country are not subjected to any such future misguided efforts by independent counsel. Hopefully, all persons involved in this endeavor have learned this a valuable lesson.

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Respectfully submitted,



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United States Court of Appeals
For the District of Columbia Circuit

FILED SEP 5 2001

Special Division

August 28, 2001

UNDER SEAL

Mark J. Langer
Clerk
United States Court of Appeals
District of Columbia Circuit
Washington, D.C. 20001-2866

Re: Laura L. Callahan

Dear Mr. Langer:

This responds to your letter dated April 27, 2001 in which you notified me and my client, Ms. Laura L. Callahan, as to the submission of a Final Report by Independent Counsel Ray. You indicated that Ms. Callahan and I could review the portions of the Report in which Ms. Callahan is mentioned and submit to you "any comments or factual information for possible inclusion in an appendix to the Report."

Having undertaken a review of the relevant portions of the Final Report provided to her, Ms. Callahan respectfully submits the attached brief comments and observations for inclusion in the document in order to provide a complete and accurate understanding of the events described.

Should you have any questions, please do not hesitate to contact me. We appreciate the courtesy extended to Ms. Callahan and trust the attached material will be given appropriate consideration.

Sincerely,

Ralph L. Lotkin
Counsel to Laura L. Callahan

Attachment

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UNDER SEAL

SUBMISSION TO THE UNITED STATES COURT OF APPEALS
DISTRICT OF COLUMBIA CIRCUIT
WASHNGTON, D.C.

I.
GENERAL COMMENTS AND OBSERVATIONS OF LAURA L. CALLAHAN

The assertions of certain members of the Northrup Grumman email contractor group should be evaluated in the context of all of their prior sworn testimony to the U.S. House of Representatives. By so doing, it is evident that the assertions of Mr. Haas and Ms. Lambuth are not only directly contradicted by the other contractor group members, but also that these two individuals directly dispute each other in critical respects.

When viewed from the perspective of all testimony given, the personal animus within the Northrup Grumman group, and the ill will directed at me and others in the White House Office of Administration by Mr. Haas and Ms. Lambuth in particular, becomes obvious. Such attitudes easily explain why the allegations and innuendos as to the claimed threats and directions given to the contractor employees are a matter of sharp disagreement by those individuals and do not withstand scrutiny.

Perhaps the best support for this view is found in relevant portions of the March 23, 2000, testimony given by the contractor personnel to the House Committee on Government Reform. Because of limitations imposed on me by the Committee as to my use of their hearing transcript, my references are, of necessity, to the unofficial record of testimony that appeared on the Internet provided by the Federal Document Clearing House, Inc. I believe the Internet transcript is accurate as to the matters asserted. The quoted excerpts are in chronological order, although not adjacent to each other, except as noted. The following statements were made by the Northrup Grumman personnel and Members of the Committee during the hearing:

> **Salim**: "I do not remember hearing the word jail and I never felt threatened. In my mind, this was simply a technical issue that had a technical solution. My understanding was that this issue would remain with the small group only temporarily until the Office of Administration had a chance to manage the situation."
>
> * * *
>
> **Hawkins**: "Ms. Lambuth said she worked directly for Ms. Crabtree. That is incorrect. Her manager was Bob Whiteman. * * * Northrup Grumman employees were called to unauthorized meetings because of Ms. Lambuth. Repeatedly during the time of employment with EOP, Ms.

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Lambuth was counseled by her manager, by me, and by her C-exec management for failure to comply with management directives."

* * *

Spriggs: "To the best of my knowledge, my actions and those of my colleagues were properly supervised and directed. They were law-abiding and within the scope of the existing Logicon contract."

* * *

Salim: "I did not feel threatened."

* * *

Spriggs: " Yes, I was there. Similar to [Salim], I did not hear the word 'jail'. * * * But, again, I don't specifically remember a reference to jail either."

* * *

Chairman Burton: "There's some difference as to whether or not there was the threat of jail."

* * *

Haas: "At no time did I look at any other documents in any other mail files, nor have I ever mentioned that there was involvement with Filegate or any other document."

* * *

Chairman Burton: "And so, Ms. Lambuth, that conflicts with your recollection of the events. Is that a fair observation?"

Lambuth: "Yes, that does conflict."

* * *

Mr. Waxman: "Ms. Salim, let me ask you first: Are you aware of any information that would substantiate Ms. Hall's accusations [regarding missing emails relating to filegate, Monica Lewinsky, or Vice President Gore's fund-raising]?

Salim: "No, sir."

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Spriggs: "The only thing that I can think of that may even come close to doing that is early on we speculated about possible information, but had no direct knowledge of what was in it. And, you know, so we had no information to give her [Hall] or Ms. Lambuth or anyone else."

Barry: "No, I don't."

Haas: "No, sir."

Lambuth: "I still stand behind what I said before * * *."

* * *

Salim: No, sir. I do not remember hearing the word 'jail' from anyone in that meeting."

* * *

Salim: "I believe that that [the direction to not to discuss the email problem outside appropriate channels] was a reasonable request for them to ask us to keep a lid on this until they could manage the situation."

* * *

Spriggs: "* * *I had no knowledge of anyone trying to stop us from doing any of that. Or trying to keep any information away from the -- Starr, or anyone else at that point."

* * *

Lambuth: "* * *I think in the beginning, we all felt that they just wanted to get their act together basically."

* * *

Spriggs: "When I was called into that office and Ms. Crabtree and Mr. Lindsay were giving me instructions, I perceived that those instructions were reasonable instructions."

* * *

Lambuth: "* * * And I was also threatened by Mr. Hawkins * * *."

Hawkins: "That is absolutely untrue. Absolutely, positively untrue. She was never threatened with her job."

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* * *

Chairman Burton: [To Mr. Haas.] Did you ever tell Sheryl Hall anything to the effect that if the results of the e-mail searches became known, the results of the investigations would be different and other people would go to jail?"

Haas: "No, sir * * *."

* * *

Lambuth: "We really had no space in which to work. We had none of the equipment that we really needed to do this even though we had been -- we had given them space."

Congressman Souder: "No, wait second. I'm sorry, I need to follow up. You're saying that there was more space at a Starbucks and across the street in LaFayette Park than in the White House. I mean, this isn't plausible."

* * *

Congressman Souder: [To Ms. Golas] So you just -- you made your own personal conclusion that this could be more like classified material, than anybody suggesting that to you?"

Golas: "Yes. No one used the word classified to me."

* * *

As can readily be seen, the testimony of the Northrup Grumman contractor personnel was not only challenged by individuals within that group but also by Members of the Committee. Hopefully, placing the inflammatory allegations and contradictory statements in appropriate context should be adequate to finally put this matter to rest.

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II.
SPECIFIC COMMENTS REGARDING VOLUME III, APPENDIX 3 OF INDEPENDENT COUNSEL RAY'S FINAL REPORT ENTITLED, "THE WHITE HOUSE'S NON-COMPLIANCE WITH SUBPOENA REQUESTS FOR ELECTRONICALLY MAINTAINED DOCUMENTS"

1. Page xxi, line 3:

My correct name should be stated as "Laura L. Crabtree". I have never been known as Laura Crabtree Callahan. At all times while employed at the Executive Office of the President, I was known as Laura L. Crabtree – not Callahan (I was not married at the time and, therefore, had not changed my last name to Callahan). Also, my middle initial was not "C".

2. Page xxiv, footnote 105:

The earlier reference to "jail" which is here softened to state "or words to that effect" clearly indicates a lack of consistency and the absence of a clear recollection as to what was actually said. I firmly recall that no such reference was made by me.

3. Page xxiv, footnotes 106 and 107:

The factual assertion that "Haas then asked Callahan whether he could tell Virginia Apuzzo if she inquired" did not occur as has been claimed.

4. Page xxi and xxii, footnote 88:

The reference to Lambuth at a May 3, 2000 interview asserts Callahan told her she would lose her job and be thrown in jail. I never had a meeting with Lambuth individually regarding this issue after being notified by her of the email problem and at no time where there threats made. The first kick-off meeting to discuss the problem was with the contractor group.

5. Page xxiii, footnote 97:

Lambuth states she or her team was not to email, talk on the telephone, or write anything down about the matter. This did not occur in any conversation with me. No such instruction was given since it would logically preclude any meaningful analysis or interaction regarding the issue, either within the group or with government personnel.

6. Page xxiv, footnote 105:

As noted above (item 2), the "jail" or words to that effect stated by Haas was both inconsistent and inaccurate. As previously stated, I made no such reference.

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7. Page xxiv, footnotes 113 and 114:

Both Spriggs and Salim contradicted Haas and Lambuth—they stated that they had no recollection of a jail warning. Also, in footnote 116, page xxv, Ms. Salim stated she did not feel threatened.

8. Page xxvi, footnote 128, last sentence:

It is my recollection that there was no threat or mention of jail.

9. Page xxi, Footnote 88:

Crabtree never heard Lindsay threaten anyone about losing his or her job, being arrested, and thrown in jail. Therefore, Crabtree could not and did not repeat any such threat on behalf of Lindsay.

10. Page xxi, footnote 87:

The reference to Lambuth talking about the matter to anyone, including Hawkins and Jim Wright is incorrect. Crabtree told Lambuth to refer anyone with questions to her or to Lindsay. Crabtree also informed Lambuth that Lindsay said he would brief Hawkins and Wright, which he did.

11. Page xxii, reference to footnote 90:

The assertion about Crabtree informing Lambuth that they did not want any of this leaking to the press is not correct. Lambuth, in fact, raised the issue of improper press disclosure because of her concern as to gossip by her staff, specifically Mr. Haas. Lambuth was thereupon reminded of the proper procedures when dealing with the press and that any press inquiries were to be referred to the Media Affairs Press Office.

12. Page xxiii, footnote 105:

The reference to Haas stating after Lindsay hung up that Crabtree reiterated Lindsay's statements and told employees that if they broke this confidence "we will use the law to put you in jail, you won't work in this business or town again. We will use the fullest extent of the law to prosecute you" is not correct. Crabtree did not make any such threats, nor did she hear Lindsay make such threats.

13. Page xxii, footnote 92:

See comment in item 12, above.

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WILLIAM JEFFERSON CLINTON AND HILLARY RODHAM CLINTON

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EDWARD BENNETT WILLIAMS (1920-1988)
PAUL R. CONNOLLY (1922-1978)

United States Court of Appeals
For the District of Columbia Circuit

FILED DEC 10 2001

Special Division

December 7, 2001

By HAND DELIVERY

UNDER SEAL

Hon. Mark J. Langer
Clerk of the Court
United States Court of Appeals, District of Columbia Circuit
United States Courthouse—Fifth Floor
333 Constitution Avenue, N.W.
Washington, D.C. 20001-2866

In re: Final Report of the Independent Counsel (In re: Madison Guaranty Savings & Loan Assn. (Div. 94-1))

Dear Mr. Langer:

This will confirm that, pursuant to the Order of the Special Division filed on October 31, 2001, counsel for former President Clinton and Senator Clinton have now had a chance to review the entire four volume Final Report of the Independent Counsel on the Whitewater matter. We believe it appropriate to indicate here, for the record, that pursuant to the Division's sua sponte Order, we have now had a chance to review the entire Final Report. This review, however, does not affect the statements made in my letter dated October 24, 2001, except those which pertain to how much of the Final Report we were allowed to review.

Sincerely,

David E. Kendall

DEK/bb

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UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

United States Court of Appeals
For the District of Columbia Circuit

Division for the Purpose of
Appointing Independent Counsels

FILED OCT 5 1 2001

Ethics in Government Act of 1978, As Amended

Special Division

In re: Madison Guaranty Savings & Loan Assn.
Final Report of the Independent Counsel

Division No. 94-1

Before: SENTELLE, *Presiding*, FAY and CUDAHY, *Senior Circuit Judges*.

ORDER

This matter comes before the Court upon the submission of comments in response to the filing of the final report of the independent counsel, and it appearing to the Court that:

Counsel for former President William Jefferson Clinton and Senator Hillary Rodham Clinton has filed comments on their behalf; and,

that the making of those comments was potentially handicapped or the comments truncated by counsel having been given only a portion of the report for review; and,

perhaps unknown to either the independent counsel or the parties this Court has in the past permitted the principal subjects of extended reports in independent counsel matters to have access to the full report before the making of comments; and,

it might be in the best interest of the parties hereto and the United States that former President Clinton and Senator Clinton be provided further access and a further opportunity for comment.

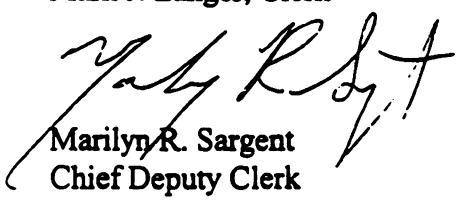
Therefore, upon the Court's own motion, it is

ORDERED, ADJUDGED and DECREED that within 10 days of the date of this order

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counsel for former President Clinton and Senator Clinton and the independent counsel respond to the Court as to whether it is the wish and desire of the parties Clinton that they be given access to the full report and that the period for comment be extended and that the independent counsel show cause, if any he has, as to why such further access might not be provided.

Per Curiam
For the Court:
Mark J. Langer, Clerk

by 

Marilyn R. Sargent
Chief Deputy Clerk

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United States Court of Appeals
For the District of Columbia Circuit

FILED OCT 2 4 2001

Special Division

October 24, 2001

By HAND DELIVERY

UNDER SEAL

Hon. Mark J. Langer
Clerk of the Court
United States Court of Appeals, District of Columbia Circuit
United States Courthouse—Fifth Floor
333 Constitution Avenue, N.W.
Washington, D.C. 20001-2866

In re: Final Report of the Independent Counsel (In re: Madison Guaranty Savings & Loan Assn. (Div. 94-1))

Dear Mr. Langer:

Pursuant to 28 U.S.C. § 594(h)(2) and the sealed Order of the Division for the Purpose of Appointing Independent Counsels, entered April 27, 2001, please accept this letter filed on behalf of former President Clinton and Senator Clinton, persons mentioned in the Final Report of the Independent Counsel (In re: Madison Guaranty Savings & Loan Assn. (Div. No. 94-1)), prepared by the Office of Independent Counsel ("OIC"). This letter constitutes written comments and factual information to be included in an appendix to the Final Report.

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The four-volume Report is lengthy, and this letter will not attempt to refute factual inaccuracies or evaluate the Report's overall significance. We do believe it is appropriate, however, to point out a few facts that will help put the Report in perspective.

At the outset, one thing can be said with confidence about this unprecedentedly long, intense, and expensive scrutiny of the President and Mrs. Clinton: if anything improper concerning Whitewater could have been unearthed relating to the Clintons, it would have been. The time, investigative resources, and willpower were all there, and the Report should be read with this in mind.

I. COMMITMENT OF LAW ENFORCEMENT RESOURCES

The law enforcement resources consumed during the OIC's eight-year Whitewater investigation were substantial. According to the Report, the OIC "examined a voluminous documentary record (well in excess of 10 million pages), interviewed thousands of witnesses, issued in excess of 3,000 grand jury subpoenas in Little Rock and Washington, D.C., and reviewed all available reports of other agencies and entities about these matters." (Vol. I, p. 22).[1] The Report does not

[1] These totals are only for the Whitewater portion of the investigation. With respect to its investigation of the FBI Files controversy, the OIC reported that it used more than ten attorneys, an undisclosed number of FBI agents, and four IRS agents, that it issued 15 grand jury subpoenas for testimony and 29 document subpoenas, that it took the sworn testimony of more than 90 witnesses outside the grand jury, and

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reveal, in the excerpts produced to us,[2] the number of FBI, IRS, and other federal agents assigned to this investigation, nor the number of person hours these investigators spent on Whitewater-related tasks.

Somewhat surprisingly, the Report does not, again, in the excerpts produced to us, disclose the financial cost of the investigation. According to separate figures provided elsewhere by the General Accounting Office, as of March 31, 2001, the Office of Independent Counsel had spent $64.2 million.[3] The final costs will surely

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that it obtained and reviewed over 31,000 documents. Final Report of the Independent Counsel (In re: Madison Guaranty Savings & Loan Association)—In re: Bernard Nussbaum 11-12 (March 16, 2000). With respect to its investigation of the Travel Office controversy, the OIC reported it "assembled a team of attorneys, agents, paralegals, and support staff," used the services of more than ten attorneys and an undisclosed number of FBI agents, took the sworn testimony of more than 127 witnesses, issued 125 grand jury subpoenas seeking witness testimony, as well as 89 subpoenas seeking the production of documentary evidence, and reviewed over 58,000 pages of documents. Final Report of the Independent Counsel (In re: Madison Guaranty Savings & Loan Association)—In re: William David Watkins and Hillary Rodham Clinton 10-11 (October 18, 2000).

[2] We have been provided for review only selected portions of the four-volume Report. The order of the Court allows individuals to review "the relevant portions of the Final Report" at the office of the Court Clerk. Order, In re Madison Guaranty Savings & Loan Association, April 27, 2001. The Clerk's letters accompanying the order authorize the President and Senator Clinton to examine only the portions of the Report in which they are mentioned. Letters from Mark J. Langer to David Kendall (April 27, 2001). Cf. 28 U.S.C. § 594(h)(2) ("The division of the court may make any portion of a final report . . . available to any individual named in such report for the purposes of receiving within a time limit set by the division of the court any comments or factual information that such individual may submit.").

[3] See General Accounting Office, Financial Audit: Independent and Special Counsel Expenditures for the Six Months Ended March 31, 2001, GAO-01-1035 (Sept. 28, 2001), and earlier audit reports (GAO) –01-505; GAO/AIMD –00-310, 00-120, 99-292, 99-105, 98-285, 98-100, 97-164, 97-64, 96-166, 96-67, 95-233, and 95-113). This total will be somewhat greater by the time the OIC finally winds up its operation. The GAO audits do not break down these numbers for the Whitewater, FBI Files,

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approximate the total cost to the taxpayers of the failure of Madison Guaranty Savings & Loan, which, according to the Report, was "in excess of $70 million." (Vol. I, pp. iii-iv).[4]

II. LENGTH OF THE INVESTIGATION

The Report notes that "[t]o many, this eight-year investigation has gone on too long," a sentiment that the Report concedes is "understandable" (Vol. I, p. iv), but the Report nowhere offers any real explanation of why the investigation dragged on so long, through seven years of the Clinton presidency and beyond. This is puzzling, because the governing statute directs that an independent counsel investigation be conducted "in a prompt, responsible, and cost-effective manner," and it further directs the appointing court to select as independent counsel "an individual who will serve to the extent necessary to complete the investigation . . . without undue delay." 28 U.S.C. § 593(b)(2).[5]

Travel Office etc. investigations of the OIC. By contrast, Pillsbury, Madison & Sutro's investigation and reports on Whitewater cost the RTC $3.8 million and were completed in less than two years. See S. Rep. 104-280, at 399 (1996).

[4] The provenance of this loss number is not disclosed in the excerpts of the Report we were given to review. The RTC's earlier loss estimates were significantly lower. In 1990, for example, it estimated the cost of Madison Guaranty's failure at $47.7 million. Resolution Trust Corporation News Release (Nov. 30, 1990), 1990 RTC LEXIS 499, at *2.

[5] By way of comparison, the first six special prosecutors appointed to the office (between 1979 and 1986) all together spent $4.52 million and finished their investigations in an average of 18 months apiece. Other investigations, while

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This lengthy investigation imposed a great burden on the President and Mrs. Clinton in terms of time spent, distraction, and expense. The Clintons cooperated fully and made themselves available for testimony whenever requested. The President gave lengthy testimony about Whitewater under oath to the OIC on five different occasions – on June 12, 1994, April 22, 1995 (three days after the Oklahoma City bombing), July 22, 1995, April 28, 1996, and July 7, 1996. Mrs. Clinton also gave lengthy testimony under oath on June 12, 1994, April 22, 1995, July 22, 1995, January 26, 1996, and April 25, 1998, and she gave brief testimony under oath on January 14, 1998. The Clintons provided more than 90,000 pages of documents to the OIC, including extensive personal records dating back to the 1970's, they submitted written interrogatory answers, and they provided information informally in a variety of ways.

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longer and more detailed, have still been completed at significantly lower cost in a relatively short time. Between 1987 and 1989, for instance, James McKay investigated an array of complex issues -- Lyn Nofziger's alleged violation of post-employment conflict of interest laws; Attorney General Meese's conduct concerning the Wedtech Corporation; Meese's financial holdings and allegations he had committed income tax fraud; allegations Meese had violated conflict of interest laws; allegations of bribery and violations of the Foreign Corrupt Practices Act concerning Meese's involvement in the Aqaba Pipeline project, and other matters -- in just over three years, for under $3 million. Even the Iran-Contra probe, which addressed myriad issues of undeniable relevance to national security, and required investigation on three continents, cost nearly $17 million less than this investigation, and took only seven years. See Jack Maskell, *Independent Counsels Appointed Under the Ethics in Government Act of 1978: Costs and Results of Investigations*, CRS Report 98-19A (updated April 12, 1999).

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III. ACHIEVEMENTS OF THE INVESTIGATION

From the portions of the Report available for our review, there do not appear to be significant new findings. This same ground has been frequently covered in the past eight years by many other investigations. Indeed, the Report notes that "[t]he U.S. House of Representatives Banking Committee, U.S. Senate Banking Committee, the FDIC, the RTC Professional Liabilities Section ('RTC-PLS'), the FDIC Office of Inspector General ('FDIC-OIG'), the RTC Office of Inspector General ('RTC-OIC'), and Pillsbury, Madison & Sutro (as a contractor for the RTC) all conducted investigations" into these matters (Vol. I, n. 16, p. 8), but the Report does not analyze or summarize these other investigations, and it does not indicate whether and how its own investigation amplified or altered the findings of the other shorter and less expensive probes.

Perhaps most extraordinary is the similarity of the conclusions of the OIC's Report and the Lyons Report issued in March 1992 by the Clinton for President Campaign. The Lyons Report, which cost $25,000 and was done in three weeks, concluded that the Clintons had invested their own funds in Whitewater Development Company, that they had "lost significant sums" and not received any return on their investment, and that they were personally at risk on the mortgage loans on the Whitewater land. Letter from James M. Lyons to Governor and Hillary Rodham Clinton, at 1-2 (March 23, 1992) ("Lyons Report"). The Lyons

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Report also concluded that "at all material times the McDougals or their agents exercised total control over the management and operation of the corporation and its investments." Id., at 1. The OIC's Report observes that "[t]he final 1994 Lyons Report, the RTC, and the Independent Counsel agreed on the Clintons' and McDougals' fundings of Whitewater" and states that "[a]ll three investigative entities reached substantially the same conclusions" about Whitewater Development Company, Inc.[6] (Vol. II, p. 79). The OIC's Report echoes the findings of the Lyons Report about the operation and management of Whitewater. The Clintons were personally liable on the two 1978 acquisition loans for the Whitewater land, but were "'passive investors' and relied on the McDougals to manage and operate Whitewater. The Clintons relied on the McDougals to tell them when to make a financial contribution to the venture and believed they did so whenever requested . . . . The Clintons were not told of all the actions by Whitewater Development, and did not know what the McDougals spent on Whitewater, the sources of money, or the nature of an expense." (Vol. II, p. 70 (footnotes omitted)):

> "The Clintons' investment in Whitewater was financially unsuccessful. They invested a substantial amount of personal funds and realized no

[6] Whitewater Development Company, Inc., was always a relatively small company; the land purchased by the Clintons and McDougals in 1978 totaled 230 acres. The two couples were jointly liable on the $182,611.20 mortgage loan and the $20,000 down payment loan.

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> profit from the venture. In the main, they permitted Jim McDougal to manage the investment, and McDougal failed in making the venture profitable."

(Vol. II, p. 106).

In the one arena where the OIC had exclusive jurisdiction, criminal prosecution, it failed to gain convictions in three out of the four cases it actually took to trial.[7] It lost both cases it argued in the Supreme Court.[8] While it obtained a handful of guilty pleas, nearly half were to misdemeanors, and most of these were in cases where there were originally one or more felony charges.[9] None of these cases involved allegations regarding the President or Mrs. Clinton.

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[7] The OIC won guilty verdicts against Jim Guy Tucker, and Jim and Susan McDougal, in May 1996; it failed to convict Herbie Branscom and Rob Hill in July 1996, Susan McDougal in April 1999, and Julie Hiatt Steele in May 1999. While previous Independent Counsels have declined to prosecute in several instances, failure to convict after an indictment has been extraordinarily rare.

[8] In Swidler & Berlin v. United States, 524 U.S. 399 (1998), the Supreme Court ruled that the OIC was not entitled to attorney-client privileged documents of the late Vincent Foster in the hands of Foster's personal attorney. In United States v. Hubbell, 530 U.S. 27 (2000), the high court ruled that a second prosecution of former Associate Attorney General Webster Hubbell was in violation of his Fifth Amendment rights because the OIC immunity granted Hubbell in the earlier prosecution covered his "testimonial" act of producing documents in that first case, which the OIC impermissibly sought to use in the second case.

[9] Neal Ainley was indicted on five felony counts and pled guilty to two misdemeanors. See Associated Press, *Ex-Banker Pleads Guilty in Whitewater Probe*, L.A. Times, May 3, 1995, at 5. Charles Matthews was indicted on two felony counts and pled guilty to two misdemeanors. See Joe Stumpe, *Fitzhugh, Matthews Accept Deal, Jail Time*, Ark. Democrat-Gazette, June 24, 1994, at 1A. Eugene Fitzhugh was indicted on two felony counts and pled guilty to one misdemeanor. See id. John Haley was indicted on one felony count and pled guilty to one misdemeanor. See Associated Press, *Tucker Pleads Guilty*, Newsday, February 21, 1998, at A13. Stephen Smith and Larry Kuca each pled guilty to one misdemeanor. See David Maraniss, *Prosecutor Nets an Unlikely Subject*, Wash. Post, June 9, 1995,

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IV. THE REPORT'S NEW DISCLOSURES ABOUT THE ORIGINS OF THE WHITEWATER INVESTIGATION

One unexpected achievement of the Report is that it documents, perhaps unintentionally, the plainly partisan origin of the Whitewater investigation. The Report demonstrates that the origin of the RTC's 1992 criminal reference was indeed an attempt to politically embarrass Governor Clinton in the last weeks of his campaign for President. Our ability to comment on this is limited because we were not given to review most of the relevant pages, but the story which emerges from what we were given suggests that partisan political machination and stalwart professionalism collided in the waning days of the first Bush administration. Yet while chiding various critical press comments of President Clinton, seven years into the investigation (Vol. I, pp. i-v), the Report is apparently oblivious to the significance of the facts it recounts about the real partisan origins of the 1992 investigation—and instead chooses to analyze the question in terms of "why Main Justice took no action during October 1992" (Vol. IV, p. 55).[10]

In 1992, the United States Attorney in Little Rock was Charles Banks. An active Republican, he had run unsuccessfully for Congress as a Republican in 1990,

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at A16; Ellen Joan Pollock, *Whitewater Plea Agreement Indicates Counsel Is Preparing to Indict McDougal*, Wall St. J., July 14, 1995, at B4.

[10] We emphasize that we have been given for review only a few pages of this discussion in Volume IV between pages 1 and 56. It is possible that the entire narrative will put the facts we recount above in a different context.

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had been appointed United States Attorney by then-President Bush, did not consider himself a "friend" of Governor Clinton, was "opposed to most of Clinton's political positions," and had been recently nominated by President Bush to be a federal district judge. (Vol. IV, p. 8). Banks received, through the FBI's Little Rock field office, a criminal referral from the Kansas City office of the RTC on September 2, 1992, about two months before the Presidential election. (Vol. IV, pp. 5-6).[11] While the referral focused on the McDougals, the witnesses included Governor and Mrs. Clinton. Banks "was curious why the RTC was sending his office material that should have been submitted with the first McDougal prosecution" in 1989-90. (Vol. IV, p. 10). His office had "never handled a referral in that manner," and he told the OIC he "felt the referral gave him no basis to suspect the Clintons of criminal conduct, and was not inclined to investigate them." (Vol. IV, pp. 11, 14 (footnotes omitted)). He felt that the RTC "was angling for an overt investigation before the imminent presidential election because the inquiry would become public." (Vol. IV, p. 11 (footnotes omitted)). He told the OIC that "you could just bet" on word of grand jury subpoenas getting out, had they been issued before the 1992 election. (Vol. IV, n. 65, p. 11).

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[11] The RTC investigator who principally conducted the 1992 investigation, one Jean Lewis, was later to give memorable testimony before the Senate Whitewater Committee. See, e.g., Seper, *Whitewater Witness Rushed to Hospital – Lewis Grilled Over Remark About Clinton,* The Washington Times, at A1 (Nov. 30, 1995); Yost,

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The Report indicates that even before Banks contacted his superiors in Washington, D.C., about the referral, the referral was known in the Bush White House, including the fact that Governor and Mrs. Clinton were mentioned in it. On September 17, 1992, Ms. Edie Holiday, Secretary to the Cabinet in the Bush White House, telephoned Attorney General William Barr to inquire whether he was aware of "a pending matter in Justice (she may have said it was a criminal referral) about a presidential candidate or a family member of a presidential candidate. Barr said he would [know about it] if it was pending in the Department of Justice. Holiday said she was talking about a savings and loan matter, and it became clear to Barr she was referring to Governor Clinton. Holiday did not say where she heard the rumor, and Barr did not ask." (Vol. IV, p. 15 (footnotes omitted)). The Report also discloses that there is "some evidence that at some point" C. Boyden Gray, the White House Counsel, "tried to find out about the referral. Albert Casey, Chairman of the RTC, recalled receiving a call from Gray about the referral's status . . . . Casey went to William Roelle, Executive Vice President of the RTC, and asked about the status . . . Roelle told Casey the Clintons were not named as targets, but simply as potential witnesses." (Vol. IV, n. 101, p. 16).[12]

Ex-Investigator Used Epithet to Describe Clinton, Associated Press, PM Cycle (Nov. 29, 1995).

[12] The Report also states that at some point Gray called Casey back "and told him to forget about his earlier inquiry," but it is unclear from the excerpts we were given to

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It is clear from the portion of the Report we were given that in September and early October, 1992, officials at the Department of Justice made a concerted effort to find out what was in the referral and what was being done with it in Little Rock. After receiving Holiday's phone call, Attorney General Barr conducted a "discreet search" for evidence concerning the referral (Vol. IV, p. 16), and Bush DOJ officials contacted FBI headquarters in Washington (Vol. IV, p. 17). When the FBI reported back that it had no evidence of an investigation concerning the Clintons in Little Rock, "Barr asked [the FBI official, one Raphaelson] if he was sure there was no case involving the Clintons. Raphaelson said he would contact the FBI again and also have the Executive Office for the U.S. Attorneys . . . check. Barr agreed, but said there should be no hint that higher levels of Justice were interested." (Vol. IV, p. 19 (footnotes omitted)).

FBI headquarters then set about to see if it could find "an RTC referral which mentioned Governor Clinton" and specifically "to find out if FBI -- Little Rock had [any knowledge of such a referral]." (Vol. IV, p. 20 (footnotes omitted)). A Bureau official in Washington, Ronald Dick, telephoned the FBI in Little Rock and was told that agents there "did not have an ongoing investigation on any RTC criminal referral" mentioning Governor Clinton. (Vol. IV, p. 21). However, shortly after this

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review whether Casey passed on to Gray any information he had learned about the referral. (Vol. IV, n. 101, p. 16).

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call, Dick received more information about the referral, "perhaps from Justice" (Vol. IV, p. 22 (footnotes omitted)), and this new information "prompted him to call Little Rock again to make sure there was no pending investigation out of that office" (ibid.). During this second call, one of the FBI agents in Little Rock told Dick that the FBI office there "had received an RTC referral about Madison Guaranty mentioning the Clintons." (Ibid.) Dick also reported back to his superiors in Washington that "the FBI in Phoenix had heard that senior RTC officials might be sitting on a criminal referral mentioning Governor Clinton." (Ibid.)

Four weeks before the Presidential election, the Little Rock FBI office formally notified Bureau headquarters of the referral in an October 7, 1992, teletype. This document characterized the Clintons as "witnesses" and made clear that Banks was suspicious about the origins of the referral:

> "IT WAS ALSO THE OPINION OF USA [United States Attorney Banks] THE ALLEGED INVOLVEMENT OF THE CLINTONS IN WRONGDOING WAS IMPLAUSIBLE, AND HE WAS NOT INCLINED TO AUTHORIZE AN INVESTIGATION OR RENDER A POSITIVE PROSECUTION OPINION."

(Vol. IV, p. 26). The teletype concluded by stating that the Little Rock office had taken no investigative action on the matter and was advising Bureau headquarters of the matter "DUE TO ITS SENSITIVE NATURE." (Ibid.)

There ensued a meeting at Main Justice, involving high DOJ and FBI officials. As a result of the meeting, FBI headquarters sent a teletype to the Little

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Rock office ordering that a "limited investigation" should be undertaken and that the results along with "anticipated investigative and prosecutive plans" should be sent to FBI headquarters by close of business on October 16, 1992, approximately three weeks before the Presidential election. (Vol. IV, p. 37).[13]

Banks convened a meeting in his office on October 14. According to the Report, he "said 'all of a sudden, we had this FBI pressure that something had to be done by October 16th.' Banks thought it was the witnesses rather than McDougal who were creating the interest. He assumed there had been contact between the FBI and Main Justice, though no one told him this. Banks sensed that an 'investigation, analysis, or decision' was being done on a time frame set by FBIHQ, and it would lead to 'doing something right now with the grand jury.'" (Vol. IV, p. 43 (footnotes omitted)).

As a result of Banks' meeting, two communications were sent to Washington.

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[13] The teletype is carefully worded and contains language which ostensibly prevents leakage to the public ("LITTLE ROCK SHOULD NOT CONDUCT ANY OVERT INVESTIGATION SUCH AS WITNESS INTERVIEWS OR SERVING OF GRAND JURY SUBPOENAS AT THIS TIME. IN ADDITION, THE DOCUMENTS SHOULD BE AFFORDED APPROPRIATE SECURITY SO AS TO MAINTAIN THE PRIVACY OF THE WITNESSES." (Vol. IV, p. 37). However, the direction to initiate an investigation, however "limited", the order that the Little Rock FBI office "SHOULD OBTAIN FROM THE U.S. ATTORNEY AND REVIEW THE DOCUMENTS REFERENCED IN THE CRIMINAL REFERRAL" (ibid.), and the requirement that the results of the investigation, plus a plan of investigation and prosecution, be submitted to Bureau headquarters all make reasonably plain that the bureaucratic scheme here was actually to gin up activity which might, somehow, be leaked to the press just before the election. And this was certainly how United States Attorney Banks interpreted the teletype, as is set forth above.

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First, an FBI teletype dated October 16 was sent to Bureau headquarters:

> "AS DISCUSSED IN REFERENCED TELEPHONE CALL, LITTLE ROCK WILL NOT INITIATE AN INVESTIGATION OF CAPTIONED MATTER [the RTC's referral].
>
> DURING THE PERIOD OCTOBER 9-16, 1992 [the United States Attorney and Little Rock FBI] CONDUCTED AN EXTENSIVE REVIEW OF THE REFERRAL AND ALL OF THE APPROXIMATELY 300 EXHIBITS FURNISHED TO USA [United States Attorney] BY RESOLUTION TRUST CORPORATION (RTC). USA CONCURS THERE IS ABSOLUTELY NO FACTUAL BASIS TO SUGGEST CRIMINAL ACTIVITY ON THE PART OF ANY OF THE INDIVIDUALS LISTED AS WITNESSES IN THE REFERRAL."

(Vol. IV, p. 46). On the same day, Banks himself wrote a letter to the DOJ in which he "restated his 'serious reservations' about prosecuting the individuals listed in [the RTC referral]. Banks opined there was no case provable beyond a reasonable doubt against any of the witnesses . . . ." (Vol. IV, p. 51 (footnotes omitted)). According to the Report, Banks also stated that "the referral was an attempt to influence the election. He said it was 'inappropriate' for him to participate in such an investigation, and that doing so would amount to 'prosecutorial misconduct . . . detrimental to the Department of Justice, FBI, this office and to the President of the United States." (Vol. IV, p. 52 (ellipsis in original) (footnotes omitted)).

Banks' strong stand apparently prevented the RTC's referral from becoming public prior to the 1992 election. The OIC stated that it interviewed the former DOJ Associate Attorney General in charge of the Criminal Division, Robert Mueller

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(now FBI Director) "about the reasons why Main Justice took no action during October, 1992." (Vol. IV, p. 55). Mueller had agreed with Banks: he told the OIC that he "viewed his role as making certain the matter was being appropriately handled" and that he wanted "to avoid any appearance that the Justice Department was improperly involved" (Vol. IV, pp. 55-56 (footnotes omitted)).[14]

V. RELIABILITY OF THE REPORT

While the governing statute requires a final report to "set[] forth fully and completely a description of the work of the independent counsel," 28 U.S.C. § 594(h)(1)(B), it does not prescribe any particular form that such a report should take. The OIC has chosen to organize its factual narratives around the question whether there was sufficient evidence to prove beyond a reasonable doubt that the President or Mrs. Clinton committed any federal criminal offense. This is a somewhat odd and pejorative formulation to choose, for it leads to unjustifiably weak statements of exoneration and, by implication, suggests that while there is not evidence beyond a reasonable doubt, there might nevertheless be evidence of some

[14] The Report's relatively cursory treatment of the Bush White House contacts with law enforcement personnel in 1992 stands in marked contrast to its exhaustive post-election analysis (over 200 pages) of the far more innocuous contacts between various Clinton White House officials and Treasury Department personnel in 1993-94. These latter contacts were devoted to managing the fall-out from improper RTC leaks about that agency's 1993 criminal referrals, not to finding out information from or influencing Department of Justice officials about possible prosecutions.

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criminal conduct. It is therefore important to emphasize that the Report's actual narrative of facts, when fairly and carefully read, lends no support to such an innuendo.[15] One might say with equal justification that the OIC has uncovered no evidence from which a jury might infer beyond a reasonable doubt that the Clintons had pilfered Powerball tickets, trapped fur-bearing mammals out of season, or sold nuclear secrets to Liechtenstein.

Additional proof of the actual absence of wrongdoing may be found in the fact that the powers of the OIC encompassed civil litigation. The OIC was authorized by statute to "participat[e] in court proceedings and engag[e] in any litigation, including civil . . . matters, that such independent counsel considers necessary." 28 U.S.C. § 594(a)(2). It chose not to file any such suits (e.g., for fraud on a federally insured savings and loan association). In such a civil case, the evidentiary standard would simply have been preponderance of the evidence. The fact that it chose not to do so, in light of the evidence the Report recites, makes the limited conclusion of "no

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[15] The Report occasionally notes the unreliability of its few key witnesses, such as David Hale, an inveterate and self-confessed liar and fraud. The Report observes, also, that James McDougal's "testimony after signing a cooperation agreement with the United States differed substantially from his testimony during his criminal trial." (Vol. II, note 276, p. 56). As the Report delicately phrases it, "[t]he testimony of both Hale and McDougal [would be] subject to substantial impeachment." (Vol. II, p. 103): "Both witnesses were convicted felons who testified pursuant to cooperation agreements with the [Independent Counsel], from which they expected to benefit. McDougal had also previously given sworn testimony contrary to his later sworn declarations . . . ." (Ibid.).

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evidence beyond a reasonable doubt" somewhat odd, since the OIC never attempted even to meet the lower and more permissive civil standard with any claims.

This unfair and misleading focus on the beyond-a-reasonable-doubt standard is not the only thing that makes the Report's analysis unreliable. The Report often attempts to marshal the facts in the most ominous and pejorative way while omitting obvious and widely known background information which would give those facts a markedly different spin. We cite just a few examples.

(1) Discovery of the Rose Law Firm Billing Records for Madison Guaranty.

The Report concludes that "[i]nsufficient evidence exists to determine conclusively how the billing records were transported to Washington, D.C." (Vol. I, p. 131), but it offers no explanation for why it would have been in any way in the Clintons' interest to delay producing the now renowned billing records for 1 ½ years from mid-1994 to early 1996 (a delay which appears somewhat inconsequential in the context of the investigation's eight year length).[16] The Report offers, and there is, no remotely plausible reason for the records to have been consciously withheld for eighteen months, and then produced just as the 1996 Presidential campaign kicked into high gear and just as the First Lady began a much-publicized book tour

[16] Madison Guaranty received, of course, each one of the Rose Law Firm bills during the 1985-86 period. The Report does not explain, in the sections we were given, why these bills were not discovered and analyzed by the RTC, which had custody of all the records of the defunct S&L. This failure is particularly puzzling in view of the extensive investigative efforts conducted by Jean Lewis in 1992. See note 11, supra.

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for It Takes a Village which entailed daily interviews with journalists—diabolically clever timing for some kind of nefarious cover-up.[17] Nor does the Report acknowledge the significance of the discovery of Foster's own set of the billing records in his Little Rock attic in July 1997 – which completely refuted the theory that the billing records produced in January 1996 were his set, somehow spirited out of his office just after his suicide in July 1993. Nor does the Report offer any

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[17] Compare the observations of Iran-Contra Independent Counsel Lawrence Walsh, with respect to a document production issue that had arisen in his investigation:

> "On November 4, 1986, George Bush had begun keeping a diary, which consisted of observations dictated to his secretary at the end of each day. These observations had been typed and stored in Bush's Houston office. Bush had continued the diary through his 1988 campaign but had kept its existence secret from most of his staff. In September 1992, Bush's secretary had raised with Bush the need to produce the notes after receiving a memorandum from Boyden Gray's office regarding material we had requested. Bush had told her to turn them over to Boyden Gray for his decision. Boyden Gray had held them until after the election.
>
> We [the Iran-Contra Office of Independent Counsel] were first told about the diary on December 11, 1992 [after the election], by Paul Beach, one of Boyden Gray's assistants. Beach turned over some of the notes that day, and [Assistant Independent Counsel] Gillen set about reviewing them. On December 23, he told me that the diary notes would have been relevant—although not necessarily dramatic—in 1987 . . . .
>
> This production of Bush's notes had clearly been delayed until after I announced the end of my investigation and after the election."

Lawrence E. Walsh, *Firewall: The Iran-Contra Conspiracy and Cover-up* 488-89 (1997).

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surmise as to why the billing records would be withheld at all,[18] since they confirm with precision the small amount of work the Rose Law Firm actually did for the savings and loan.[19] Indeed, after the discovery of the billing records, the RTC supplemented its investigation, and issued an expanded report on the evidentiary significance of the billing records within two months; it found them to be "evidence of [an] innocent activity," and declared the theories alleging wrongdoing on Mrs. Clinton's part to be "strained at best."[20]

(2) The Susan McDougal $300,000 Loan "Benefitting" Whitewater.

The Report asserts that the $300,000 loan to Susan McDougal d/b/a Master Marketing received on April 3, 1986 from David Hale's small business investment corporation was one "partially benefiting Whitewater" (Vol. I, p. 15) because $25,000 of this was used to make a down payment on an 810-acre land parcel in

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[18] Prior to the discovery of the billing records, it was known that Mrs. Clinton had done work for Madison Guaranty in addition to the work on the preferred stock and brokerage issues. She had already acknowledged that work, answering questions from the FDIC in November, 1994, about the research the Rose Law Firm had done on the "wet/dry township" issue for the IDC land project which later became known as Castle Grande. See Official Record of FDIC Interview with Hillary Rodham Clinton) (Nov. 10, 1994) (Case No. I094-096) at pp. 3-5. The Report notes that during her April 22, 1995, deposition by the OIC, she did not deny doing work for Madison Guaranty apart from the preferred stock and brokerage issues: "Well, I did work. I just can't remember ten years from the work exactly what the work was." Vol. II, note 995, p. 273.

[19] Indeed, as the Report several times points out, the "regular counsel" (Vol. I, p. 39) or "principal law firm" (Vol. II, p. 109) of Madison Guaranty was the Mitchell Williams law firm. See also Vol. II, p. 503 ("regular firm").

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south Little Rock called Lorance Heights (Vol. II, p. 51). While the land was originally acquired in the name of Whitewater Development Company, there is no evidence that the Clintons knew anything about this transaction. The OIC Report notes that McDougal did not mention this and indeed lied about it in a "status report" he sent the Governor and Mrs. Clinton on November 14, 1986.[21] After the Clintons declined to turn over their Whitewater stock to McDougal (because they were still liable on the mortgage acquisition loan for the Whitewater land), McDougal transferred the land out of Whitewater Development, to another corporation he controlled. As the RTC's Pillsbury Madison report observed, when McDougal transferred the Lorance Heights land out of Whitewater on December 1, 1986, the transfer "did not relieve Whitewater of the mortgage; [it] did, however, remove the asset . . . . The transaction did not benefit Whitewater or the Clintons; in fact, it left Whitewater with a large mortgage but no corresponding asset, and eventually it led to litigation and the entry of a judgment against Whitewater."[22]

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[20] RTC, Supplemental Report on Whitewater Development Company by Pillsbury, Madison & Sutro, at 164 (Feb. 25, 1996).

[21] McDougal's "Dear Bill and Hillary" letter stated "This is a status report on Whitewater Development Corporation [sic] . . . As of last summer we had succeeded in selling all of the property . . ." (DKRT200475). Since McDougal had recently acquired the Lorance Heights property in the name of Whitewater Development Company, this statement was flatly false.

[22] RTC, Preliminary Report on Whitewater Development Company by Pillsbury, Madison & Sutro, at 119-121 (footnotes omitted) (April 24, 1995).

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(3) Susan McDougal's Refusal to Testify in 1996.

The Report makes a great deal out of Susan McDougal's refusal to answer questions before the grand jury in 1996 and focuses on her specific refusal to answer three questions ("Did you ever discuss your loan from David Hale with William Jefferson Clinton?", "Did you ever discuss Lorance Heights with William Jefferson Clinton?", "To your knowledge, did William Jefferson Clinton testify truthfully during the course of your trial?") (Vol. II, p. 65), but it does not set this refusal in context. Ms. McDougal refused to answer all questions put to her by the OIC because of her apprehension that Independent Counsel Starr "only 'wanted me to tell them something bad about the Clintons'" (Vol. II, p. 66), and she feared further prosecution if she refused to do so.[23] The Report notes that she testified at her

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[23] Ms. McDougal was not alone in leveling such charges. After the OIC obtained Webster Hubbell's guilty plea to felony charges and he had served his time in prison, it nevertheless indicted him, his wife, his accountant, and his attorney; Hubbell famously proclaimed: 'The office of the independent counsel can indict my dog. They can indict my cat. But I am not going to lie about the president or first lady or anyone else.'" Stephen Labaton, *Friend of Clinton Indicted a 2d Time*, N.Y. Times, April 30, 1998, at A1. Hubbell was himself indicted yet again a few months after he made the comment. See Neil A. Lewis, *Starr Indicts Hubbell a 3d Time*, N.Y. Times, Nov. 14, 1998, at A1.

Stephen Smith said that "he was afraid to not cooperate with the government. . . . When he was summoned to appear before a Whitewater grand jury in 1996, Starr's office provided Smith with a 'script' that Smith said contained lies and mischaracterizations of people and events. 'They asked me to implicate others in a criminal conspiracy,' he said." Linton Weeks, *The Siege Of Little Rock*, Washington Post, March 27, 1999, at C1. "'It was almost like they were writing fiction,' Smith said." William Glaberson, *Some Question Whether Starr Has Crossed Line*, Orange County Register, Feb. 8, 1998, at A30.

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criminal contempt trial in 1999 (Vol. II, p. 67), but it does not indicate that she there provided no testimony whatsoever that the Clintons knew anything about the loan she had received from David Hale. Moreover, in 1996, at the same time she was refusing to testify before the OIC's grand jury, she gave statements to interviewers that were highly supportive of the Clintons.[24]

(4) The Clintons' Tax Payments.

The Report identifies ten deductions on the Clintons' 1978-1992 tax returns that it claims were erroneous. Two of these were deductions in the Clintons' favor, which they did not claim (Vol. II, pp. 89, 91), as was a bad debt deduction which, the OIC states, they would have been entitled to take (Vol. II, p. 95). But as to four of the remaining deductions, the Report fails to state that the Clintons had long ago acknowledged the erroneousness of these deductions, and repaid them, with

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Other witnesses complained of similar intimidation to fabricate testimony. Julie Hiatt Steele testified that she felt pressure from the OIC to make up testimony against the president. See Reuters, *Witness Tells of Starr Pressure*, Newsday, April 3, 1999, at A3. Sarah Worsham Hawkins was repeatedly threatened with immediate indictment when the OIC wanted her cooperation, though no charges were ever filed. Glaberson, supra; see also Marie Cocco, *Who Investigates the Investigator?*, Des Moines Register, Feb. 14, 1998, at 7.

[24] The Report does note some of these statements, albeit in footnotes. Ms. McDougal told Diane Sawyer of ABC News on August 30, 1996, that "I don't know of anything illegal that Bill or Hillary Clinton ever did." (Vol. II, n. 314, p. 65). On the same broadcast, she stated that "[t]he Clintons never had a loan at Madison Guaranty. Jim and I did. And if Jim gave them money from Madison Guaranty, it would be easily traceable. It's a federal institution. All the money going in and all the money going out has been accounted for and looked [at] and examined and reexamined. And I've never seen one document, one shred of evidence, that any

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interest,[25] even though they were not legally obligated to do so.[26] Even Senator D'Amato's Senate Banking Committee Majority Report on Whitewater recognized and reported that these repayments had been made.[27]

* * * * * * * * * * * * *

This investigation took over eight years and cost more than $64 million -- certainly the most expensive and unnecessary exoneration in American history. At

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money left Madison Guaranty going to the Clintons illegally." (Vol. II, n. 319, p. 66).

[25] The Clintons have made payments to cover potential tax disputes on three occasions, each time to the Bureau of the Public Debt and to an Arkansas charity (the state has no public debt), each time with interest. In December 1993, the Clintons made total payments of $4900 federal, and $800 to an Arkansas charity to cover 1984 and 1985 interest deductions. In April 1994, the Clintons made payments of $13,449 federal and $1166 state to cover potential miscalculations on their 1980 return. And in May 1996, they made a federal payment of $2,910 and a state payment of $455 to cover recalculations of 1987 interest and 1988 capital gains. None of these payments were legally required.

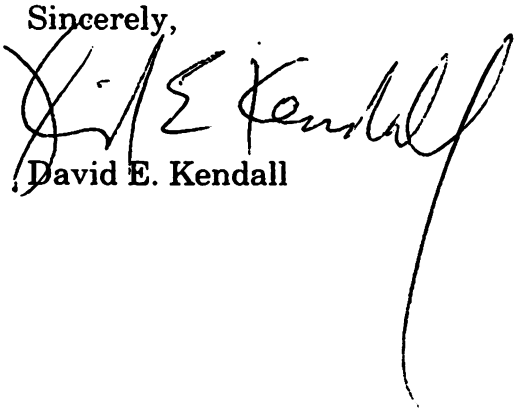
[26] As to the four remaining deductions (one of which was approved in a 1982 IRS audit), three of them were addressed at length in the tax opinion the Clintons released in May, 1996, which was prepared by Sheldon Cohen (President Johnson's Commissioner of Internal Revenue), Jerome Kurtz (President Carter's Commissioner of Internal Revenue), and John Nolan (President Nixon's Deputy Assistant Secretary for Tax Policy and former Chairman of the ABA's Section on Taxation). The fourth deduction identified by the OIC is a $1275.15 check the Clintons wrote in 1987 to pay property taxes on the unsold Whitewater land. While it is true, as the OIC notes (Vol. II, p. 93) that the Clintons were not legally obligated to pay these taxes, they did so. Given the company's financial condition at the time, the Clintons' accountant who prepared the returns reasonably took the position that these payments were not contributions to capital but rather expenditures to protect the investment and their own creditworthiness, which were therefore deductable.

[27] S. Rep. No. 104-280, at 485 (1996).

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the end of the day, one is entitled to ask what the point of the exercise was. Despite its length, the Report provides no answer.

Sincerely,



David E. Kendall

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E. GLION CURTIS

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August 31 2001

United States Court of Appeals
For the District of Columbia Circuit

FILED AUG 3 1 2001

Special Division

To the Independent Counsel
In Re: Madison Guaranty Savings
and Loan Association

The purpose of this note is to correct a statement in your final report.

At page 155 paragraph 15 the first sentence reads that "...E. Glion Curtis [was] Assistant General Counsel for the Department of the Treasury [and] became Acting General Counsel..."

This is not correct. I was, at the time, Assistant General Counsel for the RTC and became its Acting General Counsel.

I request that your report be changed to reflect this correction.

Respectfully,

E. Glion Curtis

E. Glion Curtis
1915 W 49th St
Westwood Hills KS 66205

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HARRY DON DENTON

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Harry Don Denton
226 Cambridge Place
Little Rock, AR 72227-2100

UNITED STATES COURT OF APPEALS
FOR DISTRICT OF COLUMBIA CIRCUIT
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CLERK

United States Court of Appeals
For the District of Columbia Circuit
FILED FEB 14 2002
Special Division

October 20, 2001

Ms. Marilyn Sargent
Chief Deputy Clerk
United States Court of Appeals
District of Columbia Circuit
Washington, DC 20001-2866

Re: Madison Guaranty Savings & Loan Association

Dear Ms. Sargent:

Pursuant to your letter of April 27th, I hereby submit comments regarding the Final Report filed with the Court by Independent Counsel Ray. In preparing my remarks, I realized that this report was filed with the Court under seal and the contents should not be disclosed to any party. As I am unable to personally type the letter, I shall only address my overall impressions and comments with no specific references to details.

The Final Report does not accurately characterize the activities and my participation in the transactions investigated. Conclusions are drawn erroneously and the report contains errors and misrepresentations on certain events. From some of the conclusions reached, it appears that the opinions of several of the Associate Independent Counsels including Hardin, Lerman, and Bennett were not accurately represented. The same stands for Agent Kusach with the FDIC-OIG. The terms fraud, deceit, and misstatements are improperly used in reference to my involvement.

This statement is submitted respectfully to the court and it is my desire to provide specific references to individual items within the report after it has become public and I am able to arrange for the typing of such presentation.

Sincerely,

Harry D. Denton
HDD/alc

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EDE HOLIDAY

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October 22, 2001

United States Court of Appeals
For the District of Columbia Circuit

FILED NOV - 9 2001

Special Division

Mr. Mark J. Langer
Clerk
United States Court of Appeals
District of Columbia Circuit
Washington, D.C. 20001-2866

Dear Mr. Langer:

The Final Report fails to provide context to the referenced conversation between Ede Holiday and Attorney General Bill Barr on September 17, 1992. This letter seeks to provide that context.

Ms. Holiday, who had been accompanying President Bush to an event in Atlanta, was coincidentally seated next to Attorney General Barr - a friend of hers with whom she spoke several times a week in her role as Cabinet Secretary - on Air Force One. He was returning to Washington from an unrelated event. Ms. Holiday had read, and discussed with Mr. Barr in general terms in a casual, social conversation, a published article about then-Governor Clinton's relationship with Madison Savings and Loan and with James McDougal.

Ms. Holiday later explained to the Office of the Independent Counsel during a brief, fifteen minute interview that I attended that she had no knowledge at the time of that conversation of a criminal referral. There was no explicit discussion of a criminal referral, as Mr. Barr confirmed in his testimony before the Senate.

While asking the Attorney General about a criminal referral would certainly have been within Ms. Holiday's duties as President Bush's Cabinet Secretary, her unawareness about any criminal referral relating to then-Governor Clinton precluded her from making such an inquiry.

Ms. Holiday appreciates this opportunity to put her conversation with Mr. Barr into context and to correct any misimpression conveyed in the Final Report.

Sincerely yours,

Jonathan D. Schiller

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L. RICHARD IORIO

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L. Richard Iorio
8111 E. Champions Court
Wichita, Kansas 67226

United States Court of Appeals
For the District of Columbia Circuit

FILED NOV - 9 2001

Special Division

October 22, 2001

Mark J. Langer
Clerk
United States of Court of Appeals
District of Columbia Circuit
Washington, DC 20001-2866

Re: Independent Counsel Ray, Final Report

Dear Mr. Langer:

Attached please find the following documents:

1. Response to Reviewed Materials presented to me for review on Tuesday, July 17, 2001.

2. Overview

In a separate matter, will there be expense reimbursement for former government employees who traveled to Washington, DC to review their parts of the final report?

Sincerely,

L. Richard Iorio

Enclosures

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Response to Reviewed Materials

Volume IV, Appendix RTC Employees on Administrative Leave and other related matters.

A. The Thomas Hindes memo placing me on Administrative Leave did not give me a return date. The Kansas City Office of Investigations knew I was returning to work on Friday, August 26, 1994, before my attorney received similar information on the PM of Sunday, August 28, 1994. In fact my attorney, Joe Bocock, made the inquiry. If not for my attorney's inquiry, I am uncertain how I would have been notified. Other than the above mentioned document, no other document was presented to me until the Hindes memo surfaced in the Senate hearings in December 1995. This memo was to generate justification for the administrative leave action but in fact, was written after I was placed on administrative leave.

Comment: There needs to be one encompassing federal law that will cover whistle blowers and other employees subject to political reprisals. This law would give them protection that they do not presently have.

B. Julie Yanda's testimony advising that the Professional Liability Section (PLS) supervised Resolution Trust Corporation (RTC) in Kansas City, Missouri (KC). This was erroneous information. Investigations never were supervised by the PLS either before or after the administrative leave incident.

C. Note that the Director of Investigations, Jim Dudine of Washington DC (WDC) was not ever notified of the administrative leave. This action was a complete override of his administrative authority.

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D. Statement in review document indicated that there was not enough evidence to prove criminal conspiracy in the administrative leave action involving Richard Iorio, Lee Ausen and L. Jean Lewis.

E. Since Senior RTC Management WDC was involved and at the request of Representative Bob Barr, R-Georgia, FDIC, Inspector General, (IG) did conduct an investigation in 1996. Final report on this investigation was completed in early 1997. I was denied a copy of this report since I was no longer a government employee. I did cooperate with the investigation completely and provided documents and testimony. It appeared to me that the investigation centered solely on the RTC KC Investigations Office and never enlarged scope to cover PLS and Senior RTC Management in WDC. I was also led to believe by the IG that the other elements of the investigation were not completed because many failed to respond to inquiries from IG or denied interviews.

Comment: Does the Office of Independent Counsel have a copy of the FDIC/IG report that was finished and distributed in 1997? If not, one needs to be obtained. If affirmative, has the report reviewed to determine if new or conflicting information has been developed? If not, this review needs to be completed. All material information under this heading needs to be included in the Office of Independent Counsel report to the court.

F. In March 1994, I telephoned Jim Dudine in WDC and advised him that Jean Lewis had leaked information to Congressman James Leach, R-Iowa. I was told the day that Leach used the information on the floor of Congress. I advised Dudine that this action was subject to disciplinary action. I stated the because of the political overtones and lack of intent to distrust justice that the discipline should not be major. Dudine agreed. Shortly thereafter, I gave Jean Lewis a disciplinary warning letter and reviewed the matter with her. In the months that followed, the Office of Independent Council and the FDIC/IG

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also reviewed this matter. Other than the letter I presented to Jean Lewis, I know of no other disciplinary action.

G. In November 1993, the FBI in Little Rock, Arkansas requested a meeting with Investigations and PLS RTC Kansas City regarding subpoena compliance from PLS KC. The FBI was quite irate and accused PLS of obstruction of justice. In attendance was Don McKay, DOJ/WDC, a representative from WDC/IG, Richard Iorio and Lee Ausen, Kansas City Investigations and Julie Yanda, PLS, Kansas City. These delays and referrals occurred after PLS took over the subpoena service work from KC Investigations. This meeting took place approximately six weeks after the last 9 criminal referrals were submitted to the FBI/Little Rock on Madison Guaranty Savings and Loan. This coincided with the time that PLS/KC took over subpoena compliance. Up until that time, there had never been any problems with subpoena compliance.

H. At this time, many procedures were being changed as the 9 criminal referrals submitted in September 1993 were working their way through the FBI and DOJ.

I. Since the U.S. Attorney in Little Rock had declined prosecution on the first criminal referral submitted in September 1992, I felt that the other 9 submitted in September 1993 would also be declined. This did not occur since OIC took over the responsibility for all of the criminal referrals.

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Volume IV, Part F, Chapter 2 WH-TR contracts, 8, 9, 15, 16

A. Bill Roelle RTC/WDC convinced Jean Hanson, et al, Counsel Treasury to not read the 9 criminal referrals even though she had requested the review. The occurred on or about October 15, 1993.

B. The Washington Post released the first story about the 9 criminal referrals on October 31, 1993.

C. Roger Altman also wanted to review the 9 criminal referrals and had requested that Jim Dudine, RTC/WDC prepare a review document for him. To the best of my knowledge on information provided by Dudine, Altman backed off and no meeting or transfer of documents every occurred between these two.

D. E. Glion Curtis, Acting Legal Department Head, PLS/KC, testified that he saw a copy of the 9 referrals in Jean Hanson's possession. Whether or not he gave this to Hanson or she obtained them from PLS/KC is not known. However, information appeared in the review document, prepared by PLS on the 9 criminal referrals, which was new to INV/KC. The information tried to explain the check activity in and out of Madison Guaranty as campaign contributions for Bill Clinton.

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Volume I.

A. The 9 referrals prepared by INV/KC were not sent to WDC for distribution but rather as required procedure, referred to U.S. Attorney and FBI, Little Rock, Arkansas.

B. PLS/KC reviewed the 9 referrals before they were submitted to Little Rock. Quite possibly, PLS forwarded administrative copies to WDC. INV/KC sent one copy to INV/WDC. This was standard procedure and was done for tracking purposes.

Volume II.

A. Tulsa/INV first became involved with Madison Guaranty Savings and Loan in February 1992. Preliminary investigation was requested by WDC because of a New York Times story written by Jeff Gersch.

B. Transmission of the first criminal referral was from INV/KC in September 1992. The Tulsa, Oklahoma office was closed in July 1992. The Tulsa INV office was consolidated into the INV/KC in August 1992.

Volume IV, Part F, Chapter 1

A. This section of the report deals with the history of the first criminal referral, which was transmitted from KC/INV in September 1992. None of the outgoing acting U.S. Attorney's in Little Rock would offer an opinion on the referral. It was not officially declined until the new U.S. Attorney came on board in June 1993. At the time it was declined, the U.S. Attorney advised that she had not *even* read the referral.

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B. Apparently numerous employees of the DOJ/WDC had seen the referral and all wanted to decline prosecution for numerous reasons but no one took action until the new U.S. Attorney, Little Rock declined in June 1993. INV/KC was attempting to find out what had happened to the referral. Our only valid contact was Ms. Henneman who helped located the missing referral. She was very cooperative and worked with Jean Lewis INV/KC until the initial declination came from Little Rock. Shortly, thereafter, the other 9 criminal referrals were transmitted to the U.S. Attorney, Little Rock. Upon receipt of these referrals, the U.S, Attorney, Little Rock, recused herself and had no further involvement in this matter.

Comment: The need for a law establishing an independent counsel is real. An out of control president must be confronted. When should this confrontation occur? During the term of the Presidency or after? Can the statute of limitations be overcome? Can illegal acts of a President that affect a government be set aside? If yes, by whose authority?

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Overview

I first became involved in this matter in Tulsa, Oklahoma, February 1992. I was assigned to the Tulsa RTC Office. This is where the initial investigation of Madison Guaranty Savings & Loan occurred. The Tulsa office closed in July 1992. The KC/RTC office then had the responsibility for the investigations. I was involved in the investigation until the KC/RTC was closed and the RTC was dismantled in December 1995. Since that time, there have been periodic developments and interest. Now almost ten years later, it is soon to be over.

What I remember? I will remember the challenges, the intensity, the dedication, the struggle and the feeling of accomplishment for completing a difficult assignment. I will remember the cooperation between the RTC/INV employees and the FBI, the diligence of the OIC and the interest of Congress.

Where we successful? From a thoroughness standpoint nothing was left undone. Many man-hours were used and money was spent. The investigation was accomplished in a competent manner. From an enforcement standpoint each person involved with the investigation had to comply with the law. Those with large sources of power made it difficult but in the end, they complied either willingly or unwillingly. Justice was served. We did our job as required by law.

What will historians say? In the grand scheme of things, not very much. Just a small moment in history with a variety of views. But to those who lived with this investigation for almost ten years, it has been and will always be an unforgettable experience.

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BETTY LAMBUTH AND SHERYL HALL

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Because no one is above the law!

United States Court of Appeals
For the District of Columbia Circuit

FILED OCT 2 4 2001

Special Division

UNDER SEAL

October 24, 2001

The Honorable Mark J. Langer
Clerk, United States Court of Appeals for the
District of Columbia Circuit
333 Constitution Ave., N.W.
Washington, D.C. 20001

Re: BETTY LAMBUTH

Dear Mr. Langer:

Ms. Sheryl Hall and Ms. Betty Lambuth, by counsel and pursuant to 28 U.S.C. § 594(h)(2), respectfully submit the following comments and factual information regarding the Final Report of the Independent Counsel (In Re: Madison Guaranty Savings & Loan Association) ("OIC Report").

As a citizen and victim of the illegal and criminal threats of prosecution and jail made by Mark Lindsay and Laura Crabtree, Ms. Lambuth is shocked and concerned that this matter has not been more aggressively pursued. It is outrageous, and a dereliction of duty – not to mention potential evidence of a cover-up – that after over a year and a half since the Mail2 problem and Lindsay's and Callahan's obstruction of justice became public that the Office of Independent Counsel has still not interviewed all of the witnesses.

Further, as the person who initially came forward to expose the Mail2 problem and Lindsay's and Callahan's tampering with witnesses – at great personal and professional jeopardy to herself – Ms. Hall and Judicial Watch are offended and shocked that this matter has not been properly pursued and that she has not been protected. The OIC and the Court of Appeals cannot afford to send a message to government employees that they will be on their own and exposed to retaliation and harm if they take the courageous step of coming forward to expose government abuse. There are other federal employees who are watching how Ms. Hall fares and will no doubt be more reluctant to come forward with such information given the lack of diligence in pursing this investigation that has been

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demonstrated by the OIC.[1]

Extensive testimony demonstrating not only Lindsay's and Callahan's obstruction of justice by intimidating witnesses, but also the involvement of Northrup Grumman, Attorney Earl Silbert and his law firm, Piper, Marbury Rudnick and Wolfe, LLP, now deceased White House Counsel Charles Ruff,[2] former White House Chief of Staff John Podesta and even former President William Clinton was adduced at hearings held in the case of *Alexander v. FBI*, D.D.C. 96-2123 and 97-1288 (RCL), last year. At the conclusion of those hearings, we submitted Proposed Findings of Fact detailing the criminal and contumacious acts of these individuals and organizations. We are attaching a copy of the proposed findings as Exhibit 2 for your review.

Further, the OIC Report minimizes both the severity of the threats and the overwhelming evidence that the threats did, in fact, occur. For instance, the witness tampering engaged in by Lindsay and Callahan was so effective that employees were willing to risk their jobs rather than go to jail as Lindsay and Callahan had threatened that they would. In particular, Sandra Golas, one of Ms. Lambuth's employees, nearly lost her job, in a key incident in this case. Rather than tell her government and Northrop Grumman supervisors about the Mail2 problem after being threatened, Ms. Golas put her job at risk because she took Lindsay and Callahan's threats so seriously:

> [By Ms. Golas:] Mr. [Steve] Hawkins [her Nortrop-Grumman supervisor] and I had a conversation at which he got very loud and told me that I had 30 minutes to tell him what was going on or I could pack my bags.... He said [a little later], you know, you're bordering on being insubordinate, and I looked at him and I said if it's a choice of being insubordinate or going to jail, I guess I'll have to go be insubordinate.

---

1. *See* Declaration of Thomas J. Fitton, Exhibit 2 to Plaintiffs' Corrected Memorandum in Reply to Defendant EOP's Opposition to Plaintiff's Motion for Depostions of Clinton-Gore White House Personnel Concerning Destruction of Government Computer Property, filed February 28, 2001, *Alexander v. FBI*, D.D.C. 96-2123 and 97-1288 (RCL) (Copy attached as Exhibit 1 to this letter).

2. The timely death of Mr. Ruff, who through tough direct examination was forced to accept responsibility for the e-mail scandal, should also be investigated. He died shortly after having testified in *Alexander v. FBI*, D.D.C. 96-2123 and 97-1288 (RCL), the case that uncovered the e-mail scandal, and was likely to be the recipient of a criminal show cause order. The Court in *Alexander* has not yet issued its findings of fact and conclusions of law concerning its extensive, six (6) month plus evidentiary hearing into the e-mail scandal.

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See August 2, 2000 Tr. at 75-77, *Alexander v. FBI*, (D.D.C. 96-2123 and 97-1288 (RCL)) (Golas Testimony) (A copy of these pages is attached as Exhibit 3).

Additionally, the impact of the Mail2 problem and cover up go far beyond the impact they had on Ms. Lambuth and her employees. The Mail2 problem, or Project X as it was known within the Office of Administration, calls into question the conclusions of every investigation conducted by the Office of Independent Counsel, because it resulted in the failure to search hundreds of thousands of e-mails that might contain evidence bearing on the various scandals under investigation including, but not limited to, the Lewinsky affair, Travelgate and Filegate. In fact, as the OIC Report notes, the very e-mails at issue when the Mail2 problem was discovered were previously unseen e-mail messages between Monica Lewinsky and Ashley Raines. Clearly, there is relevant information bearing on each of the Independent Counsel's investigations in the thousands of e-mails that have not been searched. Further, the fact that Lindsay and Callahan threatened Ms. Lambuth and her employees in order to coerce them into keeping the matter secret shows that they knew they had something to hide. Under these circumstances, all of the investigations must be re-opened so that this heretofore hidden evidence can be reviewed. The failure to do this would constitute an abuse of prosecutorial discretion. If the OIC does not re-open these investigations on their own initiative, then the Court of Appeals should order it to take this step. Moreover, and most importantly, Lindsay, Callahan and others did not act alone, but with the obvious consent if not acquiescence of Mr. and Mrs. Clinton and their chiefs of staff. Indeed, the evidentiary record in *Alexander* shows that Mr. Clinton, not surprisingly, given his record of obstruction of justice, lied to the press about his knowledge of the e-mail cover-up. His and Mrs. Clinton's involvement must be investigated thoroughly.

Our system of government depends upon the citizens of this country having complete and unfettered access to information about the actions of those who are in government. The very foundations of our democracy are threatened when those in government use the power of their offices to threaten subordinates and choke off this flow of information and cover up their malfeasance and criminal behavior. In addition to the personal interest of Ms. Lambuth and her employees, who should never have been forced to suffer as they did at the hands of Lindsay and Callahan, it is this public interest in open government and accountability that is at stake in the Office of Independent Counsel's investigation of these crimes. Ms. Lambuth trusts this will be kept in mind and that the remainder of the investigation will be conducted with the urgency and aggressiveness that a matter of this magnitude deserves.

As the President and Mrs. Clinton were engaged in one scandal after another, terror cells were growing both domestically and abroad. Rather than effectively addressing this cancer, the former President and First Lady, and their subordinates, were spending time covering up their own malfeasance by destroying and suppressing e-mail evidence related to their various criminal actions.

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Now is the time for justice to be done to seek redress for the most corrupt Administration, and most criminally dishonest President and First Lady, in the history of the United States.

Respectfully Submitted,

JUDICIAL WATCH, INC.

Larry Klayman
Chairman and General Counsel

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TAB 1

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U.S. DISTRICT COURT
2001 FEB 23 AM 11:59
NANCY M. MAYER-WHITTINGTON CLERK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CARA LESLIE ALEXANDER, *et al.*, Plaintiffs, v. FEDERAL BUREAU OF INVESTIGATION, *et al.*, Defendant.	Civil Action Nos. 96-2123 / 97-1288 (RCL)

PLAINTIFFS' CORRECTED MEMORANDUM IN REPLY TO DEFENDANT EOP'S OPPOSITION TO PLAINTIFFS' MOTION FOR DEPOSITIONS OF CLINTON-GORE WHITE HOUSE PERSONNEL CONCERNING DESTRUCTION OF GOVERNMENT COMPUTER PROPERTY

Plaintiffs, by and through undersigned counsel, respectfully submit this memorandum in reply to Defendants' Opposition to Plaintiffs' motion for the entry of an order granting them leave to depose witnesses concerning reported Clinton-Gore White House vandalism of e-mail evidence, as well as for the Court to conduct a brief *in camera* proceeding with a "whistleblower" regarding his knowledge of the expurgation of potentially relevant evidence from Clinton-Gore White House computers.

I. Introduction.

In their Motion for Depositions of Clinton-Gore White House Personnel Concerning Destruction of Government Computer Property, the Plaintiffs made two requests. First, that the Court conduct an *in camera* proceeding with an EOP employee having personal knowledge of

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possible destruction of evidence in this case. Second, the Plaintiffs seek to depose witnesses in a position to have personal knowledge concerning the widely reported vandalism that occurred at the White House as the Clinton-Gore Administration drew to an infamous close. The Plaintiffs also seek to learn if potentially relevant e-mail evidence was vandalized, stolen or destroyed.

Concern with the possible loss of yet more e-mail evidence is a perfectly legitimate concern given the sordid history of obstruction and evasion that has unfolded before this Court in particularly in recent months concerning that very topic. Further, the Plaintiffs noted, the lawlessness and chicanery that were the hallmark of the Clinton-Gore Administration literally until the last minute the Clintons left The White House serves to further legitimatize the Plaintiffs' trepidation. *See* Exhibit 1, "Clintonites Left White House in Shambles," *Human Events*, January 26, 2001:

> Glass plates that had covered desktops were shattered across the floor in some rooms. The extension numbers were removed from may phones or crossed out, causing communication problems in the first days of the new administration, problems that were made worse by **sabotage done to some of the voice mail and E-mail systems.** Also, someone apparently slashed a number of phone cords. (Emphasis added.)

In response, the Clinton-Gore EOP first suggests that in lieu of a brief face to face *in camera* proceeding with the Court, the Plaintiffs should seek permission for the individual in question to submit a declaration under seal. This is a procedure that the Clinton-Gore EOP states it would not oppose, so long as copies were made available to counsel and "the parties." Second, the Clinton-Gore EOP dismisses reports of vandalism of White House property as irrelevant to this case because they contain no mention of the "'vandalism of e-mail evidence.'"[1] However, these responses simply

---

[1] In its opposition memorandum, the Clinton-Gore EOP asserts that such conduct would stand in contrast to the "existing record in this matter," which "suggests that appropriate steps were indeed taken to secure potentially relevant electronic files . . . " Opposition Memorandum at 3-4. In light of the record developed by this Court over the last several months establishing that just the opposite is true, the Clinton-Gore EOP's comment is truly astonishing.

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miss the mark.

II. Argument.

A. In Camera Proceeding.

As the Plaintiffs pointed out in their motion, the individual reporting the "cleansing" of the EOP and White House staff computers, fearing possible retaliation, insists that his identity not be revealed, particularly since he/she has told Judicial Watch that he/she believes based on past experience, that no action will be taken. According to the sworn declaration testimony submitted by the President of Judicial Watch, yet another source who has knowledge of the theft of laptop computers and telephone equipment, as well as the deletion of White House e-mail and other computer records so they could not be archived, has said that others refuse to publically volunteer information for the same reason. *See* Exhibit 2, Declaration of Thomas J. Fitton. These same sources have proven to be credible in the past. The procedure suggested by the Clinton-Gore EOP - the filing of declarations under seal with copies being furnished the parties and their counsel - does nothing to alleviate these concerns, because one of the parties is the employer from whom the individuals fear retaliation.

Granted, there has been a change of administrations, with a new and presumably more sympathetic and honest group of "Schedule C" appointees in positions of authority at the EOP. Even so, given public pronouncements repeated almost *ad nauseam* by the Bush White House that it is time to "move on," the individuals in question are unwilling to risk their careers by rocking the boat in a new White House that is uninterested in this apparent destruction of evidence. In this vein, the Plaintiffs requests that Court bear in mind that these are not individuals who have a list of wealthy donors they can call on for support should some adverse action be taken against their

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employment. They do not have legal defense trusts funded by donations from Hollywood movie stars, they can not squeeze a seven figure book advance out of some publisher in New York, and they do not have big paying jobs awaiting them in the private sector. Cast in this light, the reluctance of these individuals is perfectly understandable, and a brief *in camera* would cast no prejudice on the Clinton-Gore EOP.

B. Depositions.

The Clinton-Gore EOP apparently misunderstands what the Plaintiffs seek to accomplish by taking depositions relating to the reported vandalism of White House computers. The Plaintiffs do not seek to prove the veracity of these reports, but rather to inquire whether the reports are accurate and, if so attempt to find out who is responsible. As noted above, given the evidence that has been adduced to this Court over the last several months relating the loss and destruction of White House e-mails, inquiry into whether e-mail evidence may have been further compromised through rampant hooliganism and purposeful destruction in the waning hours of the Clinton-Gore Administration is perfectly appropriate.

Given that Mr. Podesta was the President's Chief of Staff, and given that Mr. Lindsay apparently has personal knowledge about what did or did not occur, it is only logical that they are two individuals who the Plaintiffs should be allowed to depose. *See* Exhibit 3, "Rewriting Clinton's Message," February 26, 2001. And, of course, Mr. Podesta's expertise and interest in this area concerning e-mail and the Arms2 system is well known. *See* Exhibit 4, "Podesta to Teach at Georgetown; Clinton Official Will Help Launch Law, Technology Center", *The Washington Post*, February 5, 2001. Additionally, or alternatively, the Plaintiffs request that the Court allow them leave to serve a limited number of deposition notices under Fed. R. Civ. P. 30(b)(6) upon the current

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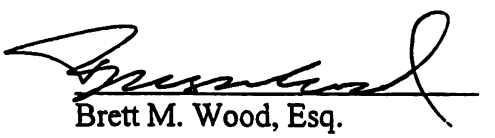
EOP, so that they may obtain sworn testimony relating to the nature and extent of damage that was discovered when the current administration assumed control of The White House.

III. Conclusion.

Based upon the considerations noted in their motion as well as those noted above, the Plaintiff submits that the two requests made in their motion should be granted. Indeed it is perplexing that the EOP would so much as partially oppose the Plaintiffs' motion, given that the matter of concern is after all the destruction of government property and, possibly, evidence in a case pending before a U.S. District Court. If ever there was a time in this case that the interests of the parties and the Court have converged, it is now. Yet, the EOP has, undoubtedly without authorization from the new Attorney General, who unlike his predecessor is a person concerned with justice, again, opposed the Plaintiffs' motion. This type of non-response is what caused and perpetuated the e-mail scandal in the first place, and the EOP's opposition should be rejected.

Respectfully submitted,

JUDICIAL WATCH, INC.



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Attorneys for Plaintiff

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EXHIBIT 1

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Clintonites Left White House in Shambles

By Timothy P. Carney

General Services Administration (GSA) workers entering the White House at noon on Inauguration Day–just after the Clintons had left–found the presidential residence and its neighboring Old Executive Office Building (OEOB) in shambles.

Not only were the W's missing from many computer keyboards, as widely reported in the press, but shattered glass, broken furniture and rotting food lay strewn about the offices that the Bush Administration would arrive later that day to occupy.

Eyewitnesses to the wreckage reported to Human Events that certain offices in the Old Executive Office Building, where many presidential aides work, were littered with beer, wine and champagne bottles–all empty, to be sure. The desktops were littered with old files, papers, pens, staplers and miscellaneous junk, as if whoever had left simply dumped out their desk drawers. Some toilets were unflushed.

Some of the items left behind–including blazers, coats, shoes and socks–perplexed the cleaning and moving crews. "Goodwill would have a field day," one witness said.

The mess was so overwhelming, both to Bush Administration officials and the maintenance crews, that one cleaning lady was found in tears, wondering how the former employees could have been so thoughtless.

Some of the damage, however, was not the result of slovenliness and carelessness but was pure vandalism–such as that removal of the letter W from many keyboards–that will cost taxpayers thousands of dollars.

Glass plates that had covered desktops were shattered across the floor in some rooms. The extension numbers were removed from many phones or crossed out, causing communication problems in the first days of the new administration, problems that were made worse by sabotage done to some of the voice mail and E-mail

Lame Duck Misdeeds:

When Crime Pays

Clintonites Leave White House in Shambles

Clinton Bans Roads in Idaho-Sized Region

Clinton May Free Convicted Killer of FBI Agents

Clinton Signs Treaty for World Criminal Court

Clinton Presumes to Nullify No-Lobbying Pledges

Will Clinton Stop Bush from Tapping ANWR?

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systems. Also, someone apparently slashed a number of phone cords.

Desks and chairs lay inexplicably overturned, including one sofa with broken legs. Computers, copying machines, and other office equipment were missing, as was a large, ornate presidential seal.

Locked file cabinets with missing keys stood uselessly amid the wreckage, and when the Bush people tried to move the desks in some offices, they found that they had been booby-trapped with a goo on the underside of tops.

Spite and reckless moving cannot account for all of the filth-much of the mess indicated a pervading lifestyle of squalor and disrespect for the beautiful, hallowed halls of the OEOB. Half-eaten sandwiches and old pizza boxes that appeared to date back many weeks greeted the Bush employees in the OEOB, as did irreparably filthy carpets. Some of the old wooden desks had writing scrawled across them.

A military steward on the plane that flew the Clintons to New York after the inauguration reports that on arriving in New York, the plane was discovered to be missing its entire supply of presidential china, silverware and blankets. Even the toothpaste was missing.

Taxpayers will foot the bill to replace or repair the broken and missing equipment in the White House and on Air Force One, but no one yet appears to be seeking prosecution for the thieves and vandals responsible for it, although clearly some laws were broken.

Career White House workers told the Bush employees who arrived after the Inauguration that they were glad to see new faces in the building and just plain glad that the Clintons were gone.

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EXHIBIT 2

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DECLARATION OF THOMAS J. FITTON

I, Thomas J. Fitton, hereby state, under oath, as follows:

1. In the course of my duties and responsibilities as President of Judicial Watch, Inc, I have learned, from sources that were in Clinton-Gore White House and elsewhere in the Clinton-Gore Administration, that the Clinton-Gore White House was in a rush in its closing days to wipe clean the hard drives of staffers computers, that phone equipment and laptop computers were stolen, and that White House e-mail systems were sabotaged in the closing days of the Clinton-Gore Administration.

2. A Clinton-Gore White House source told me that the effort to wipe clean the hard drives of staffers went beyond the normal hard drive reallocation procedures described to this Court previously. The procedure described to me by my Clinton-Gore White House source caused the source concern that the drives were being wiped clean in a way so as to make it nearly impossible to retrieve deleted data. This effort, according to this source, involved the purchase of a special computer program by the Clinton-Gore White House. This source considered the effort -- which had as a priority the goal of ensuring the hard drives of White House lawyers and high-level staffers were wiped clean – unusual and part of an effort to ensure hard drive computer evidence would be nearly impossible to recover.

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3. I have encouraged the source to come forward and tell the Court about this. Though there has been a change in administrations, this source still feels retaliation from colleagues who are unaffected by the change in presidents.

4. My other source, who was elsewhere in the Clinton-Gore Administration, told me that he/she learned from White House personnel that during the closing of days of the Clinton-Gore Administration, that White House phone equipment was stolen, White House laptop computers were stolen, and that White House e-mail and other computer records were permanently deleted so they could not be archived. This is addition to other significant property damage which occurred in The White House in the closing days of the Clinton-Gore Administration.

5. These other sources at the White House are hesitant to come forward voluntarily, I am told, because they think that Clinton-Gore political appointees have already "gotten away" with misconduct, that they think this Court and other investigators will not act upon the proffered information, the "guilty" will go free, and these sources will suffer retaliation for no good reason as a result.

I swear under penalty of perjury that the foregoing is true and correct.

Executed on February 28, 2001 in Washington, DC.

Thomas J. Fitton

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EXHIBIT 3

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Outlook 2/26/01

By Paul Bedard

Rewriting Clinton's messy exit

The stories seemed irrefutable: The exiting Clinton team trashed the White House and blew the West Wing budget on frills and bonuses. Or did they? "It just didn't happen," says **Mark Lindsay,** former White House administration boss. Democrats have said that before, but Lindsay has the goods. Issue 1: vandalism. Lindsay says he worked past the high-noon power switch on Inauguration Day, walking through key White House offices. Sure there were some pranks and some filth. But he saw none of the reported damage to furnishings. "Some staffers aren't neat," he says. Issue 2: overspending. Lindsay's office did a report showing that spending was on par with past years. And there weren't any bonuses. What's more, Lindsay tells us, his group kindly packaged boxes of office supplies for the new gang and wrote detailed how-to books explaining everything from the phones to the schedule of the classified document "burn bag" pickup. It was all part of an 18-month "legacy" project to ease the transition. So what about all those stories? Lindsay fingers low-level Bush staffers "trying to make a name with their bosses."

Fogged in

Denise Rich, former wife of pardoned fugitive **Marc Rich,** had her wings clipped last week. Justice refused when her lawyers sought to clear a trip to Mexico. Their orders: Stay around to answer questions about her ex's pardon.

Split decision

House tax writers on the Ways and Means Committee aren't buying **President Bush**'s all-at-once $1.6 trillion tax cut. A GOP member says the plan is to OK the tax-rate cuts that will provide the bulk of the benefits and then study the rest over time. Says a Bush aide: "That's no good."

His own man

President Bush has discontinued the Clinton practice of conducting nightly polls to help steer policy decisions. "He doesn't care about the daily ups and downs," says an aide. "He says what he means and means what he says."

Return to sender

The stink over former **President Clinton**'s taking White House gifts has watchdogs asking if he learned his tricks back in Little Rock. But

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efforts to track gifts accepted by the former guv have failed because the documents were destroyed, say state officials.

Wink, wink

Foes of the Clinton administration's breakup of Microsoft Corp. see a payback in former **President Clinton**'s $100,000 speech this week at rival Oracle Corp. "This quid pro quo highlights that the Microsoft suit was motivated by parochial interests to reward friends," claims **Thomas Schatz** of Citizens Against Government Waste. No way, says the software firm, which hired Clinton's private eye to snoop on Microsoft.

Blue light special

Marines aren't just the meanest fighters in town. They're the toughest bargainers, too. When they received the bill for new battle uniforms, the Pentagon's Defense Supply Agency tacked on a 22 percent markup over the manufacturer's price. After a little Marine-style haggling, the Pentagon's take was cut to 2.5 percent.

Widow's walk

Publicly, she's not interested, but Missouri Republicans are pushing Rep. **Jo Ann Emerson** to take on new Democratic Sen. **Jean Carnahan** in a special election in 2002. How to neutralize the widow issue with Carnahan, whose husband died near the end of a successful bid to oust former Sen. **John Ashcroft,** the new attorney general? Emerson is the widow of former Rep. **Bill Emerson** and won his seat in 1996.

Health chits

Hispanic businessmen are warning **President Bush** not to forget his campaign promises to them when making nice with Democrats, especially on health care for the uninsured. At issue: a bipartisan patients bill of rights that seems to jive with Bush's wishes. Missing: campaign pledges to expand medical savings accounts and new tax credits for those who buy health insurance, says **Roberto Garcia de Posada,** executive director of the Hispanic Business Roundtable. He wants them in. His leverage: One third of the 42 million uninsured are Hispanic.

Gene angel

The first draft is done, but the gene wars continue to multiply. The government's Human Genome Project director, **Francis Collins,** rejected an offer by **Craig Venter** of Celera Genomics to cohost a gala last week; Venter's team skipped it. Too bad. They missed Collins's band, the Directors, tearing through retrofitted oldies–including one that poked fun at Celera's profiteering: "This draft is your draft, this draft is my draft / And it's a free draft, no charge to see draft."

Eat on command

He stays fit and doesn't mow down everything in sight like a certain predecessor, but **President Bush** played the good soldier in a Fort Stewart, Ga., mess hall last week. Tray in hand, he asked for "a little of the lasagna" and was rewarded with a huge brick. As the chef plopped a mountain of mashed potatoes beside the pasta, Bush kind of joked, "How'd you know I wanted potatoes? I do now." No food wimp he,

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Bush added a roll and a slice of cake before hoofing it to a table.

Admirals rule!

It's not exactly nuclear powered, but Rear Adm. **Rodney Rempt** finds his snazzy Kent Street Craze scooter indispensable for navigating the Pentagon. The scooter, emblazoned with two stars, transports the Navy's surface-warfare boss around the building. "When people see me," he says, "first they wonder who's this cuckoo on a scooter. Then they see I'm an admiral. Then they smile."

With Chitra Ragavan, Suzi Parker, Richard J. Newman, and Kenneth T. Walsh

E-mail: whispers@usnews.com

Hillary's chillin' new groove

The catty rumors have been around for weeks: Newly crowned Sen. **Hillary Rodham Clinton** would take over social Washington by shoving aside hostess queens and making her spacious new digs on Embassy Row *the* hot spot for lavish political parties. Well, girls, take a chill pill. Yes, parties are planned for the mansion Clinton finally moved into last Thursday. But it won't be an every-week thing, and most will be staid fundraisers for her leadership political action committee and up-and-coming Dems. In fact, the shindigs will occur during the week when other members of the Senate club can join in. Her party-girl goal: not running for higher office but helping friends and building influence in the Senate. It's strictly a facilitator role, mostly because New York's junior lawmaker really digs the Senate, where she is having fun chewing on policy issues. Believe it or not, she doesn't miss the White House spotlight. She is even hanging out upstate with--gasp!--the locals in a bid to expand her base for re-election in 2006.

IN QUOTES

"Give me a break."
Julia Payne,
Clinton spokesperson, on re-impeaching her boss

"I hope he doesn't bring the rest of rich white America with him."
Francois Jean,
of Harlem, on ex-President Clinton's move there

"Would you like to wear a spouse pin?"
Rep. Bob Ney,
proposing with a congressional security pin

"The makeup chair is a great equalizer. It doesn't matter what your name is . . . you need help."
Rhonda Jenkins,
makeup artist at Fox News Channel in Washington

"Most of the girls I'm seeing now are girls who fantasized about being with me before we met."
Hugh Hefner

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EXHIBIT 4

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February 05, 2001, Monday, Final Edition

SECTION: A SECTION; Pg. A04

LENGTH: 392 words

HEADLINE: Podesta to Teach at Georgetown; Clinton Official Will Help Launch Law, Technology Center

BYLINE: John F. Harris, Washington Post Staff Writer

BODY:

Clinton administration chief of staff John D. Podesta, who fashioned an expertise on the intersection of technology and law during his White House years, has accepted an appointment at Georgetown University Law Center that will keep him immersed in the same themes. Georgetown will announce today that Podesta, an alumnus and former instructor at its law center, will rejoin the faculty to teach and help launch a Center on Law and Technology.

As Bill Clinton's fourth and last chief of staff, Podesta's domain included technology issues such as regulating the export of encryption software, medical and financial privacy, and security for communications and power networks. He also worked on legal issues closer to home for the Clintons, becoming a damage-control adviser on various controversies, from campaign finance to impeachment.

He has not given up that beat entirely. Last week he was informally advising the former president and Sen. Hillary Rodham Clinton (D-N.Y.) on how to handle uproars caused by their exit from the White House, including the president's last-minute pardons and the couple's decision, just before leaving, to accept $190,000 in gifts from friends and supporters. On Friday, the Clintons said they would pay for $86,000 worth of gifts they received last year.

Podesta was Clinton's staff secretary in the first term, then left to teach at Georgetown Law Center and serve on the staff of Senate Minority Leader Thomas A. Daschle (D-S.C.). He returned in the second term as deputy chief of staff before taking the top staff job in 1998. With his brother, Anthony, he founded Podesta Associates, a lobbying and consulting firm.

Podesta has taught classes in legislation, copyright and public-interest law, and congressional investigations -- the latter, he said yesterday, from the "perspective of the tortured."

Georgetown law dean Judith Areen, in a release prepared for today's announcement, said Podesta will continue to teach those subjects while organizing the new center.

"I've enjoyed my relationship [with Georgetown], and the students keep you on your toes," Podesta said. "I think these are challenging issues. It will be an environment in which I think I can help them establish this center, and they'll help me refine my thinking about these important public policy issues."

LOAD-DATE: February 05, 2001

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CERTIFICATE OF SERVICE

I hereby certify that on February 28, 2001 a true and correct copy of the foregoing PLAINTIFFS' CORRECTED MEMORANDUM IN REPLY TO DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR AN *IN CAMERA* HEARING AND FOR DEPOSITIONS OF CERTAIN FORMER CLINTON-GORE WHITE HOUSE PERSONNEL was served by first-class mail, postage prepaid, on the following:

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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CARA LESLIE ALEXANDER, *et al.*,

Plaintiffs,

v.

FEDERAL BUREAU OF INVESTIGATION, *et al.*,

Defendants.

JOHN MICHAEL GRIMLEY, *et al.*,

Plaintiffs,

v.

FEDERAL BUREAU OF INVESTIGATION, *et al.*,

Defendants.

Civil Action Nos.
96-2123/97-1288 (RCL)

CONSOLIDATED ACTIONS

MOTION TO SUPPLEMENT RECORD AND TO SUBMIT CONSOLIDATED PROPOSED FINDINGS OF FACT

Plaintiffs hereby move this Honorable Court for entry of an Order supplementing the trial record by receiving Plaintiffs' Exhibit 145 into evidence as well as for leave to file Plaintiffs' Integrated Proposed Findings of Fact, and as grounds therefor state as follows:

MEMORANDUM OF LAW

1. At the hearing on January 17, 2001, Plaintiffs offered and moved the attached Exhibit 145 into evidence. It consists of a relevant e-mail obtained during an extremely limited records search of the un-archived e-mail subject to the Mail2 issue. *See* Plaintiffs' Proposed Findings of Fact

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numbers 204f and 204g. This e-mail underscores how other e-mail which were not archived will likely be recovered in a full search, and how they will be relevant to this case. Further, it underscores the damage to Plaintiffs' case caused by the continuing obstruction of the Clinton-Gore White House and its counsel. The Clinton-Gore White House does not object to Exhibit 145 being received into evidence and Defendant Hillary Rodham Clinton and Intervenor Northrop Grumman take no position on this issue.

2. Further, Plaintiffs have combined their initial and rebuttal Proposed Findings of Fact in one consolidated document, styled Plaintiffs' Integrated Proposed Findings of Fact, for the Court's ease of reference. In addition to combining the two sets of Proposed Findings of Fact, this pleading corrects certain inadvertent, non-substantive typographical errors. These corrections are indicated by brackets and bolded typeface. The Clinton-Gore White House, Defendant Hillary Rodham Clinton, and Intervenor Northrop Grumman do not object to the filing of this combined and corrected document. This document is also submitted on diskette for the Court's convenience.

3. Plaintiffs' Integrated Proposed Findings of Fact also adds six additional rebuttal findings that were inadvertently omitted. These additional rebuttal findings are indicated by bolded typeface (*see* Integrated Proposed Findings at 142a, 142d, 200g, 204c, 211h, and 211i). Plaintiffs move for leave to supplement the record by filing these six additional rebuttal findings. The Clinton-Gore White House, Defendant Hillary Rodham Clinton, and Intervenor Northrop Grumman oppose this request.

Wherefore, Plaintiffs respectfully move this Honorable Court for entry of an Order supplementing the trial record by receiving Plaintiffs' Exhibit 145 into evidence, by granting Plaintiffs leave to file Plaintiffs' Integrated Proposed Findings of Fact, and by granting Plaintiffs

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leave to file their six additional rebuttal findings of fact (Integrated Proposed Findings 142a, 142d, 200g, 204c, 211h, and 211i).

Respectfully submitted,

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Attorneys for Plaintiffs

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To: Edward F. Hughes@EOP

CC:

BCC:

From: lisa.wetzl@mail.va.gov@INET@LNGTWY

UserAgency:

Created Date: 01/14/98 03:17:16 PM
Modified Date: 01/14/98 03:17:12 PM
Accessed Date: 01/20/98 03:56:55 PM
Updated By: CN=LNGATE2/O=EOP
Author:
Delivered Date: 01/14/98 03:17:12 PM
Posted Date: 01/14/98 03:15:00 PM
Principal:
Encrypt:
$Record:
$Tag:

Subject: Re: 1st Lady Questioned Over FBI Files

thanks so much. By the way, my lawyer called the other day and said that if I am ever contacted by Craig I have to tell him that I can't talk to him "on the advise of legal counsel." Very warm.

>-----Original Message-----
>From: Edward_F._Hughes@oa.eop.gov [SMTP:Edward_F._Hughes@oa.eop.gov]
>Sent: Wednesday, January 14, 1998 12:58 PM
>To: Wetzl, Lisa S
>Subject: 1st Lady Questioned Over FBI Files
>
>Message Creation Date was at 14-JAN-1998 13:58:00
>
>FYI:
>---------- Forwarded by Edward F. Hughes/WHO/EOP on 01/14/98
>01:58
>PM ----------
>
>Brian D. Smith
>
>01/14/98 01:50:33 PM
>
>Record Type: Record
>
>To: See the distribution list at the bottom of this message
>cc:
>Subject: 1st Lady Questioned Over FBI Files
>
>1st Lady Questioned Over FBI Files
>
> By PETE YOST Associated Press Writer
>
> WASHINGTON (AP) -- Whitewater prosecutors questioned first
>lady
> Hillary Rodham Clinton for 10 minutes today about the
>White
>House's



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> gathering of FBI background files on hundreds of political
>appointees
> from past Republican administrations.
>
> Mrs. Clinton has said she knows nothing about the
>controversy and is
> unaware of how the White House came to hire Craig
>Livingstone, the
> former aide who ran the office that gathered the FBI
>files.
>
> Whitewater prosecutor Kenneth Starr questioned the first
>lady under
> oath in the Treaty Room on the second floor of the White
>House family
> residence, where investigators have interviewed the
>president
> and first
> lady several times in recent years.
>
> White House spokesman Mike McCurry said that ``as the
>president has
> previously announced, he and Mrs. Clinton are cooperating
>fully with the
> independent counsel. Mrs. Clinton voluntarily agreed when
>an
>interview
> was requested.''
>
> McCurry said that the sworn testimony focused on ``the
>acquisition in
> 1993-94 by the White House of certain FBI file information
>concerning
> former White House employees. Consistent with past
>practice,
>no further
> statements about the content of the interview will be made
>at this time.''
>
> Also present for the questioning of Mrs. Clinton were two
>of
>her private
> Whitewater lawyers, David Kendall and Paul Gaffney, White
>House
> counsel Charles F.C. Ruff, White House lawyer Sally
>Paxton,
>and
> Whitewater prosecutors Jackie Bennett and Rod Rosenstein.
>Bennett is
> Starr's deputy in charge of the Washington office of the
>Whitewater
> investigation.
>
> The gathering of the FBI files was discovered by the House
>Government
> Reform and Oversight Committee in 1996, as it delved into
>the Clinton
> White House's purge of longtime travel office employees.
>Am
>ong the
> information the White House gathered: the FBI background
>file of the
> travel office's director.
>

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> Presidential aides then disclosed that an Army detailee at
>the White
> House, Anthony Marceca, had gathered the files of hundreds
>of former
> aides from Republican administrations. The detailee said
>he w
>as doing so
> as part of routine background checks for people whose
>names
>were still
> on lists of people with White House access.
>
> Marceca's boss, Livingstone, a campaign advanceman, said
>he
>wasn't
> aware of the gathering of the files by his subordinate and
>resigned.
> Republican hearings on the controversy never were able to
>establish that
> the Clinton White House had made any use of the files.
>
> □/#AP-NY-01-14-98 1322EST
>
>
>
>
>Message Sent To:
>Lanny J. Davis/WHO/EOP
>Deborah Falk/WHO/EOP
>Adam W. Goldberg/WHO/EOP
>Donald Goldberg/WHO/EOP
>Michael X. Imbroscio/WHO/EOP
>Dimitri J. Nionakis/WHO/EOP
>Sally P. Paxton/WHO/EOP
>Michelle Peterson/WHO/EOP
>Karen A. Popp/WHO/EOP
>Robert N. Weiner/WHO/EOP
>Erin E. Green/WHO/EOP
>Michael B. Waitzkin/WHO/EOP
>Karl A. Racine/WHO/EOP
>Dimitra Doufekias/WHO/EOP
>Rochester M. Johnson/WHO/EOP
>Alissa K. Brown/WHO/EOP
>Melissa J. Prober/WHO/EOP
>Edward F. Hughes/WHO/EOP
>Charles W. Burson/OVP @ OVP
>Matthew I. Fraidin/OVP @ OVP
>Christopher S. Lehane/OVP @ OVP
>Melissa M. Murray/WHO/EOP
>Jake Siewert/OPD/EOP
>
>
>

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CARA LESLIE ALEXANDER, *et al.*, Plaintiffs, v. FEDERAL BUREAU OF INVESTIGATION, *et al.*, Defendants.	Civil Action Nos. 96-2123/97-1288 (RCL) **CONSOLIDATED ACTIONS**
JOHN MICHAEL GRIMLEY, *et al.*, Plaintiffs, v. FEDERAL BUREAU OF INVESTIGATION, *et al.*, Defendants.	

[PROPOSED] ORDER

Upon consideration of Plaintiff's Motion for an Order Supplementing the Trial Record, as well as for Leave to Submit Consolidated Proposed Findings of Fact, and the entire record herein, it is hereby

ORDERED THAT:

1. Plaintiffs' Motions are granted; and

2. Plaintiffs' Exhibit 145 is received into evidence.

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3. Plaintiffs' Integrated Proposed Findings of Fact are deemed filed.

4. Plaintiffs' additional rebuttal findings of fact (Integrated Proposed Findings 142a, 142d, 200g, 204c, 211h, and 211i) are deemed filed.

DATED: _____

_____
The Honorable Royce C. Lamberth
United States District Judge

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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CARA LESLIE ALEXANDER, *et al.*,

Plaintiffs,

v.

FEDERAL BUREAU OF INVESTIGATION, *et al.*,

Defendants.

Civil Action Nos.
96-2123/97-1288 (RCL)

CONSOLIDATED ACTIONS

JOHN MICHAEL GRIMLEY, *et al.*,

Plaintiffs,

v.

FEDERAL BUREAU OF INVESTIGATION, *et al.*,

Defendants.

PLAINTIFFS' INTEGRATED PROPOSED FINDINGS OF FACT

Plaintiffs respectfully submit the attached Proposed Findings of Fact concerning the evidentiary hearing on obstruction, perjury, and threats concerning non-produced e-mail of the Clinton-Gore White House.

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A. **The Automated Records Management System Was Created By Barry and John Podesta to Help Records Manage Clinton-Gore White House E-Mail.**

1. Daniel "Tony" Barry (hereinafter "Barry" [or "Tony Barry"]) was hired by the Office of Administration (hereinafter "OA") as a computer specialist in the Information and Systems Technology Division (hereinafter "IS&T" or "IS&T Division"). *See* E-mail Hearing Testimony of Barry (hereinafter "Barry Testimony"), August 3, 2000 Tr. at 24, 32-33.

2. In 1993, Barry reviewed the ruling and agreements in *Armstrong v. EOP*, requiring the Executive Office of the President (hereinafter "Clinton-Gore White House" or "EOP") to put an electronic records management system in place. *See* Barry Testimony, August 3, 2000 Tr. at 33-34.

3. John Podesta, who is now White House Chief of Staff, helped design and implement the ARMS system and was heavily involved in negotiating the settlement of the *Armstrong* litigation. *See* E-mail Hearing Testimony of John Podesta [] (hereinafter "Podesta Testimony"), October 10, 2000 Tr. at 11-16. *See* also E-mail Hearing Testimony of Jason Baron (hereinafter "Baron Testimony") August 31, 2000 Tr. at 33-34.

4. Podesta recommended the filing of false court declarations with a federal court in the *Armstrong* litigation. *See* Hearing Exhibit (hereinafter "H. Ex.") 86, Declaration of Jane Weaver at ¶5.

5. John Podesta had been active in the management of the *Armstrong* litigation and formulating guidelines for storing electronic records pursuant to the Presidential Records Act. He worked with Jason Baron, Esquire in the Justice Department[,] who was handling the *Armstrong* case. *See* Podesta Testimony, October 10, 2000 Tr. at 11-13.

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6. Podesta participated in the coordination of efforts to develop a more sophisticated system for the archival of e-mail. These efforts resulted in the development of the ARMS system. *See* Podesta Testimony, October 10, 2000 Tr. at 13.

7. This system was designed to receive and archive electronic messages and was required by both the Presidential Records Act and the Federal Records Act. *See* Barry Testimony, August 3, 2000 Tr. at 45-46.

8. In the middle of 1993, after reviewing information on the legal ruling in *Armstrong v. EOP*, Barry wrote a functional requirements document for what became the Clinton-Gore White House's Automated Records Management System (hereinafter "ARMS" or "ARMS system"), which he presented to OA Counsel for review. *See* Barry Testimony, August 3, 2000 Tr. at 33, 48-49.

9. After receiving approval for the concept, Barry began development of ARMS. ARMS began operation in July, 1994. *See* Barry Testimony, August 3, 2000 Tr. at 34.

10. Barry conceived, designed, developed, wrote, implemented and tested ARMS, and currently manages ARMS. By his own admission, he is the most expert person to talk to about ARMS. *See* Barry Testimony, August 3, 2000 Tr.

11. ARMS stores three types of records: electronic mail (hereinafter "e-mail"), calendars and pagers. *See* Barry Testimony, August 3, 2000 Tr. at 42.

12. At the time that ARMS became operational, the Clinton-Gore White House was using the All-in-One e-mail system. In 1997 the Clinton-Gore White House converted from the All-in-One e-mail system to the Lotus Notes e-mail system. At the same time, a separate software program, known as the Notes ARMS Interface[,] was developed which allowed Lotus

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Notes e-mails to be communicated to and stored on ARMS. *See* Barry Testimony, August 3, 2000 Tr. at 43.

B. Court Allows Discovery [i]n Filegate, [a]nd White House Obstruction Begins.

13. In its Memorandum Opinion and Order of June 12, 1997, this Court deferred ruling on Plaintiffs' Motion for Class Certification until Plaintiffs had had an opportunity to take discovery. *See* Memorandum Opinion, June 12, 1997, at 1.

14. In order to investigate Rule 23(a) requirements of commonality, numerosity, typicality of claims, and adequacy of representation, this Court allowed discovery as to Plaintiffs' Privacy Act claims (*Id.* at 7-8, 14-15), the substitution of the United States for defendants Nussbaum, Livingstone, and Marceca (*Id.* at 18), and the definition of classes and subclasses for certification which was to include how files were improperly acquired by the Clinton-Gore White House *Id.* at 19-21.

15. On August 12, 1997, this Court granted Plaintiffs an initial six months in which to complete all discovery relating to class certification and scope of employment issues. *See* Memorandum Opinion, August 12, 1997, at 1.

16. The Court also provided for "an additional period of discovery" after resolution of the class certification and substitution issues. *Id.* at 2.

17. Plaintiffs filed their First Request for Production of Documents on October 9, 1997.

18. On November 10, 1997, the Clinton-Gore White House produced documents in response to this First Request for Production.

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19. Among the documents the Clinton-Gore White House purportedly searched to respond to the First Request for Production were documents produced to the Office of Independent Counsel for its Filegate investigation. These documents included Clinton-Gore White House e-mail produced by Barry. *See* Barry Testimony, August 21, 2000 Tr. at 36-39; *see* [*also*] March 4, 1999 Declaration of Sally Paxton at ¶3, attached as Exhibit B to Motion by Executive Office of the President For a Protective Order, H. Ex. 19.

20. During a status conference on December 19, 1997, the Court sharply rebuked the Clinton-Gore White House for attempting to engage i[n] what it described as "rolling production" of documents by which it purported to produce documents to Plaintiffs as they located them. *See* Transcript of December 19, 1997[,] Status Call at 6-9.

C. Clinton-Gore White House Obstructs E-mail Discovery with False Barry Testimony About Reliability of ARMS System.

21. At a January 13, 1998 status conference, Clinton-Gore Justice Department lawyer James Gilligan represented that e-mail after July 1994 was being records managed properly. *See* January 13, 1998 Transcript at 55.

22. On January 16, 1998, Plaintiffs served a Rule 30(b)(6) Notice of Deposition on the Clinton-Gore White House concerning "the system of files maintained and other things...including electronic mail..." [*See*] Notice of Rule 30 (b)(6) Deposition at 1.

23. Searching e-mails related to persons who were involved in or had made allegations regarding the many scandals of the Clinton-Gore White House was a routine task

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frequently assigned to Barry by White House Counsel. *See* Barry Testimony, August 21, 2000 Tr. at 31, 81, 111, 112, 116.

24. The ARMS system was used to perform these searches. *See* Barry Declaration of July 9, 2000 (H. Ex. 42).

25. Barry testified that "everybody" at the Clinton-Gore White House knew ARMS was not capturing e-mail properly. *See* Barry Testimony, August 3, 2000 Transcript at 150.

26. In addition to the Mail2 and Letter D "problems" (described below) which were kept from this Court, numerous other material failures by ARMS to records manage e-mail were also kept hidden from it. Exhibit 64 from the evidentiary hearing shows the massive scope of the ARMS system failures. In this exhibit, which contains over five-hundred pages and is labeled "Barry E-mails Documenting Problems with the Notes/ARMS interface Back to 1996," e-mail specialist Barry documents exhaustively several persistent problems with the ARMS system. *See generally* H. Ex. 64.

27. Barry documented these problems in hundreds of e-mails to his superiors and colleagues (including OA Counsel). *See, e.g.*, H. Ex. 64 at E-2355-2366, E-2422-2423, and E-2441.

28. Barry knew, at least as early as February 27, 1996, that the "interface" which allowed ARMS to records manage e-mail "was not robust enough for a production environment. It is going to need redesign to make it so." *See* H. Ex. 64 at E-2123.

29. Barry acknowledged on September 13, [1996] the loss of 3,000 e-mails from the Clinton-Gore White House computer systems. *See* H. Ex. 64 at E-2197.

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30. In 1997, there was a loss of 10,000 e-mails from the Clinton-Gore White House computer systems. *See* H. Ex. 64 at E-2234, E-2301; *see also* H. Ex. 9-17.

31. Barry still cannot account for these missing e-mails. *See* Barry Testimony, August 3, 2000 Tr. at 55.

32. The Court did not become aware and was never advised by the Clinton-Gore White House of these 10,000 lost e-mail until the subject evidentiary hearing. *Id.* at 55-56.

33. Barry and the Clinton-Gore White House had knowledge that ARMS, as early as August 28, 1997, failed to properly place e-mail in proper agency "buckets." *See, e.g.*, H. Ex. 64 at E-2152-2155, E-2162, E-2200, E-2402-03, and E-2410-2411; *see also* H. Ex. 9-21; E-mail Hearing Testimony of Kathleen Gallant (hereinafter "Gallant Testimony"), August 1, 2000 Tr. at 154-57.

34. ARMS failed to capture material information such as whether a particular document was read or unread by an e-mail recipient and any users to whom an e-mail was "blind carbon copied." The Clinton-Gore White House even knew that ARMS failed to capture the text of certain e-mail messages. *See* H. Ex. 64-E-2152-2155, 9-35, Barry Testimony, August 21, 2000 Hearing Transcript at 27-29.

35. ARMS also failed to records manage the Office of the Vice President's e-mail. *See* H. Ex. 64 at E-2134.

36. Plaintiffs had never excluded the Office of the Vice President's e-mail from any document request. (It was not until June 5, 2000, that the Court ruled that Plaintiffs could not have access to Vice Presidential e-mail which related to Filegate. *See* June 5, 2000 Memorandum Opinion at 35-36. In response to the Court-ordered search of the non-records

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managed e-mail, the Clinton-Gore White House produced one e-mail which showed that staff in the Vice President's office received information about the Filegate scandal.)

37. The President's Assistant for Management and Administration, Mark Lindsay, admitted that generally the entire Clinton-Gore White House computer system (which would necessarily include ARMS) was a nightmare. *See* E-mail Hearing Testimony of Mark Lindsay (hereinafter "Lindsay Testimony"), August 23, 2000 Tr. at 152-153.

38. In 1997, Howard "Chip" Sparks, a computer specialist at the Clinton-Gore White House, complained to his colleague Barry and many others in OA about the failure of ARMS to capture e-mails – and the resulting negative impact on searching for document requests. *See* E-mail Hearing Testimony of Howard Sparks (hereinafter "Sparks Testimony"), August 16, 2000 Tr. at 71-78.

39. Barry acknowledged that he had a conversation with Sparks about the fact that ARMS did not contain certain e-mail information that it should have. *See* Barry Testimony, August 21, 2000 Tr. at 26-29.

40. Barry acknowledged to the Court that ARMS does not contain certain e-mail information that it should have. *Id.*

41. Barry acknowledged that he did not tell the Court that ARMS did not contain certain e-mail information that it should have. *See* Barry Testimony, August 21, 2000 Tr. at 29.

42. Based on the volume of the evidence, it is inconceivable that Clinton-Gore White House Counsel and their Department of Justice lawyers in this case were not informed about and did not have know[ledge] of the substantial problems with ARMS, particularly since they consulted with Barry and others for lengthy periods. *See infra.*

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[Supp.]A. **The Clinton-Gore Justice Department's Proposed Finding That "There Is No Evidence That E-mails Relevant to this Case Have Been Lost or Cannot Be Retrieved and Produced, and There Has Been No Delay in Court-ordered Search for or Production of E-mails to Plaintiffs" (Clinton-Gore Mem at 3) is False as Demonstrated by Initial Findings 25 - 42 and the Following Rebuttal Findings.**

42a. The Clinton-Gore White House made at least two (2) policy decisions -- to recycle "old" back-up tapes and to delete "unneeded" e-mail -- that resulted in the loss of thousands of e-mails which can never [be] reconstructed because e-mail entering the Mail2 server were not being archived. *See* Gallant Testimony, August 1, 2000 Tr. at 201-203; Haas Testimony, August 15, 2000 Tr. 43-44; Hall Testimony July 31, 2000 Tr. at 152-154; Lambuth Testimony August 1, 2000 Tr. at 13-14, 55-58; H. Ex. 9-16 at EO545.

42b. Moreover, the Clinton-Gore White House admits that an additional 10,000 e-mails have been lost and cannot be account[ed] for. *See* Barry Testimony, August 3, 2000 Tr. at 55-56; H. Ex. 64 at E-2234, E-2301; H. Ex. 9-17.

42c. Also, the adjudication of the Plaintiffs' claims has been substantially delayed, and Plaintiffs have therefore been prejudiced, because the Clinton-Gore White House did not even attempt to undertake efforts to recover the unarchived e-mail until more than three (3) years after the Plaintiffs served their first requests for the production of documents and this Court ordered discovery to proceed.

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42d. This delay would have resulted regardless of whether the parties were able to reach agreement as to search terms or any other disputes involving the search for and production of e-mail.

42e. Therefore, in light of the foregoing considerations, the statement by the Clinton-Gore White House at page 3 of the EOP Post-Hearing Memorandum that "there is no evidence that e-mails relevant to this case have been lost or cannot be retrieved and produced, and there has been no delay in any Court-ordered search for or production of e-mails to plaintiffs" is false. *See* Executive Office of the President's Post-Hearing Memorandum In Opposition To Plaintiffs' Motion for Sanctions Regarding the "Mail2" Matter (hereinafter "Clinton-Gore Mem.") at 3.

42f. Vasta also confirmed that the threats delayed resolution of the Mail2 problem because Northrop Grumman employees were not free to discuss either the problem or a solution. *See* Vasta Testimony, November 3, 2000 (afternoon) Tr. at 132 ("my perception again based on experience is that if people were free to discuss the problem and its resolution from the inception, that the entire process would have been significantly shortened.").

D. Barry -- The Key Man in Clinton-Gore White House E-Mail Searches and Coverup.

43. Barry conducted searches for all of Harold Ickes' schedules at the request of Dimitri Nionakis, Associate Counsel to the President; concerning Karl Racine and Bruce Overton at the request of Mike Imbroscio; concerning Bayonne Nevis at the request of Michelle Peterson (hereinafter referred to as "Peterson"); concerning Monica Lewinsky at the request of Peterson for Robert Bennett; concerning the Lippo Group, James Riady, and James Woods; concerning United States Congressman Bob Barr at the request of Peterson; and concerning

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Dennis Sculimbrene at the request of Dimitri Nionakis. *See* Barry Testimony, August 21, 2000 Tr. at 31, 81, 111, 112, 116; H. Ex.40-2878, 40-2879, 40-2899, 40-2907, 40-2911, 40-2912, 40-3050, 40-3055, and 40-3111.

44. Barry was even contacted regarding searches pertaining to the *Alexander* case in December, 1997 by Sally Paxton, Special Associate Counsel in the Clinton-Gore White House Counsel's Office and Kate Anderson of the OA Counsel's Office because "[w]hen there was a search for document requests in lawsuits or Congress or Independent Counsel, [Barry was] the person people went to with regard to [ARMS and] e-mail [archived on ARMS]." *See* Barry Testimony, August 21, 2000 Tr. at 36-39; H. Ex.40-2869.

45. Barry also met with Sally Paxton and James Gilligan regarding e-mail searches on ARMS for this *Alexander* case in December 1997. *See* Barry Testimony, August 21, 2000 Tr. at 39-40; H. Ex.40-2872.

E. <u>Barry Discovers Mail2 Problem in Midst of Lewinsky Crisis</u>.

46. In January of 1998, shortly after the Monica Lewinsky scandal broke, Barry was contacted by Mike Imbroscio, an attorney in the Clinton-Gore White House Counsel's Office. *See* Barry Testimony, August 3, 2000 Tr. at 56-58.

47. The Clinton-Gore White House knew that if the Lewinsky scandal were true, with its underlying allegations of Bill Clinton's affair with an intern, perjury, witness tampering, and obstruction of justice[], it could be the end of the Clinton presidency.

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48. Imbroscio instructed Barry to search the e-mail accounts of Betty Currie, Nancy Heinrich, and others from between December, 1995 and January 20, 1998 to and from Lewinsky within the Clinton-Gore White House. *See* Barry Testimony, August 3, 2000 Tr. at 56-58.

49. Barry's search for the e-mails to and from Lewinsky was quite time consuming and was a high priority assignment. *See* Barry Testimony, August 21, 2000 Tr. at 49-50; H. Ex. 40-2880, 40-2883, 40-2879, and 40-2888.

50. Barry spent several long days working nights and weekends on this task. *See* Barry Testimony, August 21, 2000 Tr. at 49-50; H. Ex. 40-2880, 40-2883, 40-2879, and 40-2888.

51. Barry kept Imbroscio and Peterson informed of his progress, which was considerable. *See* Barry Testimony, August 21, 2000 Tr. at 49.

52. Barry found over 5,000 e-mails and nine boxes of responsive documents. *See* Barry Testimony, August 21, 2000 Tr. at 53; H. Ex. 40-2881.

53. In the course of his search, Barry discovered the Mail2 problem in January of 1998. *See* Barry Testimony, August 3, 2000 Tr. at 56-58; H. Ex. 9-49.

54. In January of 1998, Barry discovered that incoming e-mails from Lewinsky to Ashley Raines, a Clinton-Gore White House e-mail user, had not been captured by ARMS, whereas the reply e-mails from Raines to Lewinsky had been captured by ARMS. *See* Barry Testimony, August 21, 2000 Tr. at 42-46; H. Ex. 9-49.

55. Working with Northrop-Grumman contractor John Spriggs (hereinafter referred to as "Spriggs"), Barry was able to confirm that the incoming e-mails had made their way into the Clinton-Gore White House system, as they had made it to and through the firewall and into the

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Mail2 server, but were not captured by and stored on ARMS. *See* Barry Testimony, August 21, 2000 Tr. at 42-46; H. Ex. 9-49.

56. Barry documented his findings in a memorandum prepared by him on or about January 30, 1998. *See* Barry Testimony, August 21, 2000 Tr. at 42, 43-44, 46; H. Ex. 9-49.

[Supp.]B. **The Clinton-Gore Justice Department's Proposed Finding That When Barry Identified Mail2 in January 1998 He Found That Only "One or Two E-mails ... Had Not Been Received by or Stored in ARMS" (Clinton-Gore Mem at 8) is False.**

56a. Barry never determined that only one or two e-mails had not been received by ARMS. Rather, Barry determined that one side of an entire e-mail conversation was missing, and, after a lengthy investigation with John Spriggs, he was "unable to find any of the 6 outbound messages from that day." *See* H. Ex.9-49.

56b. The attempt by the Clinton-Gore White House, the White House Counsel's Office and the Clinton-Gore Justice Department, through blatant falsification, to minimize Barry's discovery of the Mail2 problem in January 1998 raises a strong evidentiary inference of an ongoing cover[-]up of Mail2.

57. Barry reported the problem to his Clinton-Gore White House supervisor Jim Wright and gave him a copy of his report of this event. *See* Barry Testimony, August 3, 2000 Tr. at 73-74.

58. The problem with the non-archiving of incoming e-mail which Barry and Spriggs found in January of 1998 eventually came to be known as the Mail2 problem or Project X. *See* Barry Testimony, August 21, 2000 Tr. at 54; H. Ex. 40-2882.

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[Supp.]C. **It is Likely That Barry Told The Clinton-Gore White House Counsel's Attorneys About His Discovery of Missing E-mails in January, 1998.**

58a. The extensive amount of time that Barry spent on searching for missing e-mail in January, 1998, his extensive interaction with attorneys from the Clinton-Gore White House Counsel's Office and the Clinton-Gore Justice Department, and the fact that he found relevant e-mail missing, raises a strong evidentiary inference that Barry informed attorneys from the Clinton-Gore White House Counsel's Office and Clinton-Gore Justice Department about his discovery of Mail2 in January, 1998.

59. By January of 1998, it was known by Barry and others within the Clinton-Gore White House that there was a serious problem which caused incoming e-mail not to be captured by and stored on ARMS and, therefore, not to be produced in response to document requests from various sources. *See* Barry Testimony, August 18, 2000 Tr. at 21-22, 64, 122-123, 171.

F. Barry, Clinton-Gore [White House And Department of Justice] Lawyers Prepare and Submit False Testimony.

60. Shortly after discovering the Mail2 problem, Barry had discussions with Sally Paxton, an attorney in the Clinton-Gore White House Counsel's Office, Department of Justice attorneys James Gilligan and Julia Fayngold-Covey during the preparation of a March 4, 1998 declaration submitted in this case. *See* Barry Testimony, August 3, 2000 Tr. at 122-124.

61. These conversations were "related to searches, how searches are performed, how long they take, what kind of searches we can do in ARMS, all related to ARMS." *See* Barry Testimony, August 3, 2000 Tr. at 125.

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62. Following these discussions, an initial draft of what became Barry's Declaration of March 4, 1998 was prepared by the attorneys Fayngold-Covey, Gilligan, and Paxton. *See* Barry Testimony, August 3, 2000 Tr. at 125; H. Ex. 46.

63. Given the intense public interest in and the high-stakes concerning the Lewinsky scandal, the legal ramifications of e-mail in the scandal, and the concurrent issue of possible testimony by Barry on [the] topic of EOP e-mail, an evidentiary inference can be drawn that Barry discussed the Mail2 and other ARMS problems with Paxton, Gilligan, Fayngold-Covey in the course of the preparation of the March 4, 2000 declaration.

64. Barry did not tell them what to put in the Declaration; instead, the attorneys "decided that themselves" without telling Barry the reasons Plaintiffs "had requested a 30(b)(6) representative witness[.]" *See* Barry Testimony, August 3, 2000 Tr. at 132-133.

65. Paragraph 11 of the March 4, 1998 Declaration, which states "[s]ince July 14, 1991, e-mail within EOP has been archived weekly in an on-line format that is susceptible to being word-searched in the manner described below," was written by the Clinton-Gore White House and Department of Justice lawyers, not Barry. *See* Barry Testimony, August 3, 2000 Tr. at 144, March 4, 1998 Declaration of [Tony] Barry at ¶11.

66. Barry spent thirty (30) to forty (40) hours preparing this Declaration, with the assistance of Clinton-Gore Justice Department counsel James Gilligan and Julia Fayngold Covey, and Clinton-Gore White House Counsel Sally Paxton. *See* June 11, 1998 Deposition of [Tony] Barry at 8; *see also* Barry Testimony, August 3, 2000 Transcript at 122-24.

67. Barry was told "that the idea was that if I gave these written declarations that I wouldn't have to give a deposition." *Id.* at 122.

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68. The initial draft of this Declaration was prepared in the White House Counsel's Office (without input from Barry) and then faxed by Paxton to Lindsay on February 11, 1998 with a note on the cover sheet that she would see Lindsay at 1:00 p.m. This draft was then transmitted to Barry who made handwritten notes and changes. *See* H. Ex. 46; Barry Testimony, August 3, 2000 Tr. at 132 - 136; August 22, 2000 Tr. at 32 - 35

69. What became paragraph 11 in the final version of the Declaration was paragraph 6 in the first draft. *Compare* H. Ex. 46, ¶6 to E-mail H. Ex. 18, ¶11.

70. In the initial draft, this paragraph stated "Since July 14, 1994, EOP email has been stored on **computer tapes** in a format that is susceptible to a word search" (emphasis added). In the margin next to this language, Barry added the words "on line and on tape" to clarify that the e-mail was not just on the tapes but on ARMS as well. *See* H. Ex. 46 at 4, Barry Testimony, August 22, 2000 Tr. at 35.

71. By adding "on line and on tape," Barry was indicating that both ARMS and the back-up tapes had to be searched to cover all post-July 1994 e-mail.

72. However, since Barry had designed ARMS to archive all EOP e-mail as required by the *Armstrong* decision and the Presidential and Federal Records Act, he knew that the reference to "on line" by itself would have been sufficient unless ARMS was not archiving all e-mail due to an error such as Lewinsky/Mail2 problem he found in January, 1998 and the numerous other problems ARMS had archiving e-mail. *See* Barry Testimony, August 3, 2000 Tr. at 33 - 34, 45 - 46; H. Ex. 9-49, H. Ex. 64.

73. While the first draft of Barry's March 4, 1998 [Declaration] referred to "computer tapes" and Barry's corrections added "on line and," the word "tapes" has been deleted

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from every subsequent draft and the final version of this Declaration. *See* H. Exs. 18, 49, 67, 69, 70, 71, 73, 74, 75.

74. Barry was working closely with Lindsay and attorneys in the [Clinton-Gore] White House Counsel's [O]ffice and the [Clinton-Gore] Department of Justice in drafting and revising this declaration. *See* H. Exs. 46 (Lindsay and Paxton), 49 (Paxton), 67 (Gilligan), 69 (Shapiro), and 70, 71, 73, 74, and 75 (Giles).

75. The interaction between Barry and these attorneys was extensive and detailed. *See, e.g.*, H. Ex. 46 (extensive handwritten changes by Barry) and H. Ex. 49 at 2 - 3 (February 24, 1998 e-mail from Barry to Paxton with detailed, 2 page discussion of various changes).

76. Barry did discuss paragraph 11 of his March 4, 1998 [Declaration] with Clinton-Gore White House and Justice Department attorneys Lindsay, Paxton, Gilligan, Shapiro, and Giles. *See* H. Exs. 46 (Lindsay and Paxton), 49 (Paxton), 67 (Gilligan), 69 (Shapiro), and 70, 71, 73, 74, and 75 (Giles).

77. Before signing the Declaration of March 4, 1998, Barry reviewed it thoroughly. *See* Barry Testimony, August 3, 2000 Tr. at 120.

78. When Barry signed the March 4, 1998 [Declaration], Barry knew that some inbound e-mail messages and many other e-mails inside the Clinton-Gore White House were not in ARMS. *See* Barry Testimony, August 3, 2000 Tr. at 145, H. Ex. 9-49, H. Ex. 64.

79. Paragraph 11 of Barry's March 4, 1998 Declaration is false. The Clinton-Gore White House and its legal counsel knew it was and is false. Lindsay Testimony, August 223, 2000 Tr. at 166 - 168.

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80. Barry also knows this language in Paragraph 11 of his March 4, 1998 Declaration, also used in Paragraph 4 of Barry's July 9, 1999 declaration, is false. Barry says he was pressured [by] Paxton to sign this false document.. Heissner Testimony, August 15, 2000 Tr. at 101 - 102; *see* also H. Ex. 39-1 051639-40, 051646; Paragraph 4 of Barry's July 9, 1999 Affidavit, H. Ex. 42

81. The Clinton-Gore White House filed its Motion by Executive Office of the President for a Protective Order Quashing Plaintiffs' Notice of Deposition and Request for Documents Pursuant to Rule 30(b)(6) & (b)(5) on March 4, 1998 (hereinafter "Motion for 30(b)(6) Protective Order"). *See* H. Ex. 19.

82. [Tony] Barry's March 4, 1998 Declaration, and the Declaration of Sally Paxton, an attorney in the Clinton-Gore White House Counsel's Office, were attached to the Motion for 30(b)(6) Protective Order (as Exhibits D and B respectively) to support the Clinton-Gore White House's argument that its search in response to the First Request for Production of Documents was complete, covering all potential sources and producing all potentially relevant documents, and that an oral deposition should not proceed. *Id.* at 8-11.

83. The Clinton-Gore White House Motion for 30(b)(6) Protective Order stated that "[t]he declarations [from Paxton, Laura Crabtree, the Desktop Systems Branch Chief of the IS&T Division, and Barry which were attached to the Motion] also render unnecessary plaintiffs' broad discovery requests regarding e-mail and computer files." *See* H. Ex. 19 at 11.

84. By this statement, the Clinton-Gore White House and its counsel were representing that all information relevant to the method and completeness of the e-mail searches that had been or were to be performed in this case was contained in the attached Declarations,

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including Tony Barry's Declaration of March 4, 1998. Obviously, they were worried that an oral deposition would reveal the Mail2 and other e-mail problems.

85. On March 18, 1998, Plaintiffs filed their Opposition to the Clinton-Gore White House's Motion for 30(b)(6) Protective Order (hereinafter "Opposition").

86. Plaintiffs' Opposition to the Clinton-Gore White House's Motion for 30(b)(6) Protective Order stated that the purpose of the Rule 30(b)(6) deposition was "to find out how personnel at the Clinton White House communicate, exchange information and store communications and information" and "to confirm that the Clinton White House's e-mail, computer files and electronically-stored information were readily accessible." *See Id.* at 2, 3.

87. A copy of this Opposition was faxed from Sally Paxton in the **[Clinton-Gore]** White House Counsel's Office to Tony Barry on March 23, 1998. *See* H. Ex. 48.

88. Tony Barry then faxed the Opposition to Mark Lindsay with a note that stated "Please review. I will need guidance." *See* H. Ex. 48.

89. Tony Barry confirmed in his Declaration of March 30, 1998 that he had "reviewed the Plaintiff's Opposition to the Executive Office of the President's Motion for Protective Order...." *See* H. Ex. 44 at 1.

90. Paragraph 1 of **[Barry's March 30, 1998]** Declaration states that "I previously provided a declaration in this case" and paragraphs 3 and 5 refer to "[m]y previous declaration" indicating the Barry March 4, 1998 Declaration. *See* H. Ex. 44 at ¶¶ 1, 3, 5.

91. Barry March 30, 1998 Declaration fails to correct the false information in the March 4, 1998 Declaration that all post-July 1994 e-mail is stored in a word-searchable format. *See* E-mail Hearing Exhibit 44.

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92. On March 30, 1998, the Clinton-Gore White House and its Department of Justice counsel filed a Reply Memorandum In Support of Executive Office of the President's Motion For A Protective Order Quashing Plaintiff's Notice of Deposition and Request for Documents Pursuant to Rule 30(b)(6) & (b)(5), attaching Barry's March 30, 1998 Declaration.

93. The Clinton-Gore White House's Reply noted that Plaintiffs were seeking "to ascertain the accessibility of EOP's e-mail system" and responded by stating that "EOP has provided two detailed declarations dealing with restoring, reconstructing, and searching EOP's e-mail," citing the March 4, 1998 Barry Declaration and the March 4, 1998 Paxton Declaration. *Id.* at 7-8.

94. In the Clinton-Gore White House's Reply, it noted Plaintiffs' suggestion that "EOP has misrepresented the burdens associated with e-mail searches by 'burying' the fact that post-July 14, 1994 e-mail is searchable..." and responded that "[w]holly to the contrary, EOP explaincd this to plaintiffs' counsel both orally and in writing [in] January [1998].... In addition, counsel for EOP explained these matters to the Court at the January 13, 1998 status conference." *Id.* at 10-11.

95. Attached to the Clinton-Gore White House's Reply as Exhibit H was a copy of Gilligan's letter of January 13, 1998 to Larry Klayman. *Id.*, Ex. H.

96. In that letter, Mr. Gilligan stated that "[w]e are advised that since July 14, 1994, EOP e-mail has been stored on tapes in a format that is generally susceptible to being searched by keyword." *Id.*, Ex. H. at 3.

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97. In fact, as of January 18, 1998, much [of the Clinton-Gore] EOP e-mail since July 14, 1994 had *not* been stored on tapes in a format that is generally susceptible to being searched by keyword. *See* H. Ex. 64.

98. At the January 13, 1998 hearing, Clinton-Gore White House [C]ounsel stated that "[a]s to the post July 1994 period, e-mail was also stored on tape, but it is in a format that is more readily susceptible of a word search." January 13, 1998 Tr. at 55.

99. Again, at that time, much [of the Clinton-Gore] EOP e-mail since July 14, 1994 was not readily susceptible to being word searched. *See, e.g.*, H. Ex. 64.

G. Court Unknowingly Relied on False Clinton-Gore White House Testimony In Planning E-mail Discovery.

100. On April 13, 1998, this Court ordered Plaintiffs' Rule 30(b)(6) deposition(s) to proceed stating that "[t]he parties are instructed to comply with the Rule 30(b)(6) Notice of Deposition and Request for Documents in a manner consistent with the analysis set forth in the Memorandum and Order." *See* Memorandum and Order, April 13, 1998, at 21.

101. Quoting from the Barry affidavit of March 4, 1998, the Court concluded that post July 14, 1994 EOP e-mail "has been maintained in a word searchable format and has been archived weekly in an on-line format" and directed Plaintiffs to discuss "appropriately worded searches of [the post-July 1994] backed-up and archived e-mail." *See* Memorandum and Order, April 13, 1998, at 10-11.

102. The information on Clinton-Gore White House e-mail problems was withheld from the Court. As a result, the Court was unable to order any remedial action or attendant discovery concerning ARMS and e-mail for the Plaintiffs.

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103. The April 13, 1998 Order also required the Clinton-Gore White House to produce Rule 30(b)(6) witnesses to respond to item numbers 1, 3, and 8, as those items in Plaintiffs' Rule 30(b)(6) Notice of Deposition had been defined by the Court and Plaintiffs. *Id.* at 13-14.

104. In particular, item 1 required the deponent to testify regarding "the system of files maintained to store, protect, and preserve documents and other things, including ... electronic mail." *Id.*

105. The April 13, 1998 Order also required the deponent to testify regarding "the system or systems used since January 1, 1992, to create, transmit, store, retrieve, and delete so-called 'electronic mail' (said representative(s) to have knowledge of the maintenance and operation of all electronic mail systems...)." *Id* at 15.

106. The April 13, 1998 Order also required that the deponent testify regarding "all measures for compliance at the [EOP] ... with the ... Presidential Records Act of 1978, and any other relevant statute [*e.g.*, the Federal Records Act] ... applicable to the preservation ... of documents generated ... on whatever media in the [EOP]...." *Id.* at 17-18.

107. The Clinton-Gore White House selected [Tony] Barry as its Rule 30(b)(6) designee on e-mail matters, including information on all of the areas covered by this Court's Memorandum and Order of April 13, 1998. *See* H. Ex. 50 (Barry June 11, 1998 Deposition Transcript).

108. For approximately six months after the discovery in January of 1998 of the problem with the archiving of incoming e-mail, Barry, the OA, and the Clinton-Gore White House sat on and covered up the problem, knowing that it would not go away, but hoping that no

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one else would become aware of the problem and of the critical fact that responsive e-mails existed which were not being produced.

109. No one told any of the other Northrop Grumman contractors about the Mail2 problem prior to June 12, 1998, even though such knowledge was important to the performance of their jobs and e-mail production was part of their contract with the EOP. *See* E-mail Hearing Testimony of Robert Haas (hereinafter "Haas Testimony"), August 14, 2000 Tr. at 6.

110. The discovery in January of 1998 of the fact that the missing e-mail was not being captured on ARMS was a well-kept secret by Barry, Spriggs, and a select group within the OA and the EOP until the same problem was also discovered by Northrop Grumman contractors Robert Haas and Yiman Salim in June, 1998.

H. Mail2 Problem "Rediscovered" In May/June 1998.

111. Sometime in late May or early June of 1998, the fact that the incoming e-mail was not being captured on ARMS (the "Mail2 problem") was independently discovered by Haas. *See* Haas Testimony, August 14, 2000 Tr. at 6-16.

112. Haas, a Northrop Grumman employee, has worked as a contractor at the EOP for ten years as a Lotus Notes e-mail specialist. *See* Haas Testimony, August 2, 2000 Tr. at 178; Haas Testimony, August 14, 2000 Tr. at 15.

113. Haas was working on a project around early June of 1998. He clicked on a screen or "view" which would show him all non-records managed e-mail for the selected user's account expecting to find a blank or near blank screen. Instead, he discovered a full screen indicating that there were multiple non-records managed e-mails. He also discovered that many of them were

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months and years old with some having dates going back to 1996. [*See*] Haas Testimony, August 14, 2000 Tr. at 14-16.

114. Haas was overwhelmed by what he saw on the screen, which his trained eye and mind immediately told him was a serious and longstanding problem. *See* Haas Testimony, August 14, 2000 Tr. at 14-16.

115. Haas instantly knew that it was a big problem which would need a lot of work to fix, and had a feeling that he was going to regret "ever seeing this day." *See* Haas Testimony, August 14, 2000 Tr. at 14-16.

116. The problem which Haas discovered would later come to be known as the Mail2 problem, and was the same problem which Barry and Spriggs had found earlier in January of 1998. *See* Haas Testimony, August 2, 2000 Tr. at 199-203.

117. Haas and his Northrop Grumman co-worker who was with him at the time, Yiman Salim, immediately notified their project manager Betty Lambuth (hereinafter referred to as "Lambuth") about what they had found. *See* Haas Testimony, August 2, 2000 Tr. at 185-187.

118. At Ms. Lambuth's instruction, Haas continued to investigate the problem further while she notified her contact within the Clinton-Gore White House, Laura Crabtree, who was the Lotus Notes NT server specialist in the Clinton-Gore White House. *See* Haas Testimony, August 2, 2000 Tr. at 185-187.

119. At Ms. Lambuth's instruction, Haas recorded his findings as of that time. *See* Haas Testimony, August 14, 2000 Tr. at 15-16; H. Ex. 9-12.

120. What was known at that time was that e-mail was not being processed as it should have been. *See* Haas Testimony, August 2, 2000 Tr. at 194-196; H. Ex. 9-12.

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121. Haas continued to analyze the problem and, within a couple of days, had discovered that a spelling error had affected the e-mails of what was later determined to be hundreds of Clinton-Gore White House e-mail users and also affecting over 240,000 documents. *See* Haas Testimony, August 2, 2000 Tr. at 194-196; H. Ex. 9-12.

122. Haas gave the report of affected Clinton-Gore White House users to Lambuth who passed it on to her government contacts. *See* Haas Testimony, August 2, 2000 Tr. at 194-196.

123. While producing this report, Haas was interrupted by John Spriggs, who possessed a piece of paper containing a list of four names. *See* Haas Testimony, August 2, 2000 Tr. at 199-201.

124. The list had been compiled by someone in the Clinton-Gore White House Counsel's Office and was conveyed by Mark Lindsay to Spriggs through Lambuth. *See* Haas Testimony, August 2, 2000 Tr. at 199-201.

125. The names on the list, which were recognizable to Haas as upper level executives in the Clinton-Gore White House, included Sidney Blumenthal, Erskine Bowles, Ira Magaziner, and John Podesta. *See* Haas Testimony, August 14, 2000 Tr. at 23, 24, 25, 26, and 27.

126. Haas was told by Spriggs to check the e-mail files of the persons whose names appeared on the list to determine if incoming e-mail from Lewinsky could be found. *See* Haas Testimony, August 2, 2000 Tr. at 199-204; *see also* August 14, 2000 Tr. at 23-29.

127. Haas could not locate any such e-mail directed to the people on Spriggs' list. *See* Haas Testimony, August 14, 2000 Tr. at 28-29.

128. Unrecorded e-mail was found in each of these individual's e-mail, but no e-mail from Lewinsky was found. *See* Haas Testimony, August 14, 2000 Tr. at 28-29.

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129. At Spriggs' suggestion, Haas checked the e-mail box of Ashley Raines, and discovered a motherload of over 400 documents, and also searched the account of Betty Currie (hereinafter referred to as "Currie"). *See* Haas Testimony, August 15, 2000 Tr. at 17-18; Haas Testimony, August 14 Tr. at 25.

130. The documents found in this search were printed out and constituted about two-and-one-half reams of paper, which Haas placed in an expandable accordion folder and gave to Lambuth. *See* Haas Testimony, August 14, 2000 Tr. at 7-8.

131. Haas gave the files to Ms. Lambuth, who gave them to Mark Lindsay, who gave them to the receptionist in the [Clinton-Gore] White House Counsel's Office. *See* Haas Testimony, August 14, 2000 Tr. at 8-11; Lindsay Testimony, August 23, 2000 Tr. at 144.

132. Haas later learned that Spriggs knew about the missing incoming e-mail from Lewinsky to Raines, because he had made the same discovery with Barry in January of 1998. *See* Haas Testimony, August 14, 2000 Tr. at 199-203.

133. Spriggs did not share the information about the January, 1998 discovery with Haas or other Northrop Grumman employees at the time, or even when he was allegedly helping to troubleshoot the problem with Haas in June, 1998. *See* Haas Testimony, August 14, 2000 Tr. at 198-202.

134. The search by Haas of the four names was not intended to be a comprehensive search, but rather a superficial, cursory search in 30 seconds or less to see if they could find the kind of "hits" that had previously been found with incoming e-mail from Lewinsky to Raines. *See* Haas Testimony, August 14, 2000 Tr. at 183.

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135. The search by Haas of the four names was not an effort to find all e-mail concerning Lewinsky. *See* Haas Testimony, August 14, 2000 Tr. at 183-184.

136. No one was asked to try to find all of the non-records managed e-mail concerning Lewinsky. *See* Haas Testimony, August 14, 2000 Tr. at 183-184.

137. Although Haas heard Cheryl Mills testify before Congress that all non-records managed e-mail were duplicative, no one could make that finding based on Haas's search or anything that he knew. *See* Haas Testimony, August 14, 2000 Tr. at 183-184.

138. No one did the kind of comprehensive search or analysis which would be required to support such a statement. *See* Haas Testimony, August 14, 2000 Tr. at 183-184.

139. Haas and the other employees in IS&T recognized that the failure to manage these e-mails in ARMS would have an impact on document production to the Court, the Congress, and the Independent Counsel. *See* Haas Testimony, August 14, 2000 Tr. at 34-35.

140. Although not a lawyer, Haas assumed that there were adverse legal consequences to not producing documents required by subpoena, and that to do so would be against the law and constitute obstruction of justice. *See* Haas Testimony, August 14, 2000 Tr. at 37-38.

141. It was discussed and recognized by Haas and the people with whom he worked that the law required that the documents to be maintained and produced, no matter the cost. *See* Haas Testimony, August 14, 2000 Tr. at 40.

142. It was clear to all, even computer technicians such as Robert Haas, who were untrained in the law, what the proper course of action was. *See* Haas Testimony, August 14, 2000 T. at 40.

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[Supp.]D. **The Clinton-Gore Justice Department's Proposed Finding That "It Was During His Briefings On July 6, 1998, That Barry Learned, For the First Time, Of The Systemic Mail2 Problem" (Clinton-Gore Mem at 15) is False.**

142a. Barry was not "on vacation" when the Mail2 problem was rediscovered by Haas in May/June 1998. *See* Clinton-Gore Mem. at 15. The testimony cited by the Clinton-Gore Justice Department in its Memorandum states only that Barry met with Gallant when he returned from vacation on July 6, 1998. In fact, Barry was present when Mail2 was "re-discovered" by Haas in May/June 1998.

[substitute142a.] The statement by the Clinton-Gore Justice Department that "Barry was on vacation" when the Mail2 problem was re-discovered is also false. ***See*** **Clinton-Gore Mem. at 15. When the "NG technician ... inadvertently [re-]discovered" Mail2 in May/June 1998, Barry had not left for vacation. In fact, he gave a deposition shortly thereafter in this case on June 11, 1998. H. Ex. 40-2624. His calendar indicates that he did not leave for vacation until June 24, 1998. H. Ex. 40-2627. Thus, Barry was present when Mail2 was "re-discovered" by Haas in May/June 1998.**

142b. The Clinton-Gore White House has admitted in documents produced in this case that it was Barry who discovered Mail2 in early 1998 and that in "May/June 1998 [an] NG technician ... inadvertently [re-]discovered" what Barry had previously found. *See* H. Ex. 40-4428 (emphasis added). Thus, he had discovered the problem well before the "briefings on July 6, 1998."

142c. Barry describes this problem as a "systemic" problem that "had an impact on my function to reply to search requests ... because these documents would not have been in ARMS." *See* August 3, 2000 Tr. at 80. This raises an inference that Barry recognized the problem as a

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systemic problem in January, 1998 as well and is now lying about it to cover up the fact that he knew about Mail2 when he filed his false Declarations with this Court on March 4, 1998, March 30, 1998 and July 9, 1999 and when he testified in his deposition on June 11, 1998.

142d. The attempt by the Clinton-Gore Justice Department to deceive the Court into finding that Barry was not present when Mail2 was re-discovered in the face of the evidence that he was present, and to deceive the Court into finding that the problem discovered by Haas was different from what Barry had discovered in January when even Barry has admitted that they are the same, shows that the Clinton-Gore Justice Department is participating in the ongoing cover-up of Mail2.

I. To Keep the E-mail Hidden from the Court, the Office of Independent Counsel, and Congress, Clinton-Gore White House Officials Threatened Northrop Grumman Contractors.

143. This Court heard from three witnesses who were threatened by the Clinton-Gore White House: Betty Lambuth, Sandra Golas, and Robert Haas.

144. In late May-early June, 1998, Betty Lambuth alerted Laura Crabtree to the cause of the Mail2 problem, its severity, who it affected, and its impact on searches. *See* E-mail Hearing Testimony of Betty Lambuth (hereinafter "Lambuth Testimony"), August 1, 2000 Tr. at 17.

145. Crabtree immediately consulted with her superior, Mark Lindsay, then OA Counsel, about the Mail2 problem. *See* Lambuth Testimony, August 1, 2000 Tr. at 17.

146. Lindsay told Crabtree to tell Ms. Lambuth that if Ms. Lambuth or any of her colleagues who knew about Mail2 told any unauthorized person, they would all lose their jobs,

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be arrested, and go to jail. Crabtree conveyed Lindsay's threats to Lambuth. *See* Lambuth Testimony, August 1, 2000 Tr. at 18.

147. The instructions on who not to talk included spouses and the Northrop Grumman contractors' managers. *See* Lambuth Testimony, August 1, 2000 Tr. at 18.

148. To Ms. Lambuth, these were not idle threats, as Ms. Lambuth had seen a previous contractor escorted out [of] the Clinton-Gore White House because of unsubstantiated allegations by Crabtree. *See* Lambuth Testimony, August 1, 2000 Tr. at 19-20.

149. Ms. Lambuth was also told not to write anything down about the Mail2 problem. *See* Lambuth Testimony, August 1, 2000 Tr. at at 18-19.

150. Crabtree was aware of the Mail2 problem's impact on subpoenas and document requests, having discussed it with Ms. Lambuth at those initial meetings. *See* Lambuth Testimony, August 1, 2000 Tr. at at 21-22.

151. Because of the severity of the Lindsay threat (as conveyed by Crabtree), Ms. Lambuth sought a meeting with Lindsay. *See* Lambuth Testimony, August 1, 2000 Tr. at 19-20.

152. Ms. Lambuth reported these threats to her contracting staff -- Bob Haas, Sandi Golas, John Spriggs, and perhaps Yiman Salim. *See* Lambuth Testimony, August 1, 2000 Tr. at 22.

153. Ms. Lambuth, after trying nearly an entire day to meet with Lindsay, eventually met with him in his office. *See* Lambuth Testimony, August 1, 2000 Tr. at 23-25.

154. At that meeting, Lindsay, in a serious tone, repeated the threats – telling Ms. Lambuth that she and her colleagues would lose their jobs, be arrested, and go to jail if they

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talked to unauthorized people about Mail2. *See* Lambuth Testimony, August 1, 2000 Tr. at 23-25.

155. Ms. Lambuth was "very taken aback by the threats." *See* Lambuth Testimony, August 1, 2000 Tr. at 26.

156. So serious were the threats that Lambuth feared for her personal safety. *See* Lambuth Testimony, August 1, 2000 Tr. at 26-27.

157. Clinton-Gore White House "government" officials stated that the subject e-mail was classified and/or top secret. *See* Lambuth Testimony, August 1, 2000 Tr. at 27-28.

158. The e-mail at issue was not classified or top secret. *See* Lambuth Testimony, August 1, 2000 Tr. at 28.

159. It was these threats that led to Ms. Lambuth and her team to start calling the Mail2 problem "Project X." *See* Lambuth Testimony, August 1, 2000 Tr. at 70-71.

160. One of Ms. Lambuth's government supervisors, Kathleen Gallant, Associate Director for Information Systems & Technology, confirmed that Ms. Lambuth was shaken by these threats. *See* Gallant Testimony, August 1, 2000 Tr. at 123-34.

161. At a meeting with Ms. Lambuth and Paulette Cichone (OA's then-Director of Information Management) shortly after Ms. Lambuth was threatened, Ms. Gallant saw that something traumatic had occurred to Ms. Lambuth. *See* Gallant Testimony, August 1, 2000 Tr. at 23-24.

162. Ms. Gallant would later connect the trauma to the threats. *See* Gallant Testimony, August 1, 2000 Tr. at 125-130.

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163. Shortly after Lambuth's meeting with Lindsay, Lindsay and Crabtree reiterated the threats *again* at a meeting with Ms. Lambuth's Northrop Grumman "team." Those members of Ms. Lambuth's Northrop Grumman team at the meeting were Robert Haas, Sandra Golas, John Spriggs, and Yiman Salim. *See* Lambuth Testimony, August 1, 2000 Tr. at 27-28.

164. The claim that the e-mail was "classified" was reiterated, and the "team" was told not to take notes or use the e-mail system to communicate about the Mail2 problem. *See* Lambuth Testimony, August 1, 2000 Tr. at 29-30.

165. The e-mail in question was not classified. *See* Lambuth Testimony, August 1, 2000 Tr. at 27-28.

166. It was another scare tactic by Lindsay/Crabtree designed to keep the contracting team quiet and to effect the cover-up. *See* Lambuth Testimony, August 1, 2000 Tr. at 27-30.

167. Ms. Lambuth, who has a security clearance, testified directly on this, stating that she "would not have felt that anything that was in [the] e-mail would have been classified." *See* Lambuth Testimony, August 1, 2000 Tr. at 28.

168. By falsely stating the e-mail was "classified," the Clinton-Gore White House effectively threatened also to take away Lambuth's and her colleagues' security clearances if they talked about the hidden e-mail. *See* Lambuth Testimony, August 1, 2000 Tr. at 26; Sparks Testimony, August 16, 2000 Tr. at 88-89.

169. All the staff became very alarmed about the threats, many expressing concern about the instruction not to talk to spouses about the Mail2 problem. *See* Lambuth Testimony, August 1, 2000 Tr. at 30-33.

170. Mr. Haas confirmed these threats:

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[By Mr. Haas:] Well, we were addressed over the phone by a gentleman by the name of Mark Lindsay, which is one of the government officials who was in charge of the OA division at that time...He instructed us that he had been made aware of what we were looking into and that we should treat it as though it was top secret, and not tell anybody, keep it within the group. Until we got a handle on this thing, he didn't want anybody outside of the five people in that room to know anything about it, and that if – we were not to tell – talk to our wives or anyone.

See Haas Testimony, August 2, 2000 Tr. at 187.

171. Haas thought this instruction not to talk was an unusual instruction. *See* Haas Testimony, August 2, 2000 Tr. at 188.

172. The phone conference was the first and only time that Lindsay had addressed the contractors. *See* Haas Testimony, August 15, 2000 Tr. at 28.

173. After Lindsay hung up, Crabtree reenforced Lindsay's threats:

[By Mr. Haas:] She continued the meeting and she basically reiterated two or three different ways, the same verbiage that we were not to talk about it any way, shape or form to anyone outside the room; that Laura Crabtree, Mark Lindsay, Ada Posey were the only people that could authorize us to talk to anyone outside of that room in the future; and that if we did, and they stated including our wives, that if we did, they would use the full weight of the government to make sure that we would never work in this business or this town again, in fact, they would have us arrested and put in jail.

See Haas Testimony, August 2, 2000 Tr. at 188-89.

174. These "head spinning" threats frightened Mr. Haas. *See* Haas Testimony, August 2, 2000 Tr. at 189-190.

175. Ms. Crabtree was speaking for the Clinton-Gore White House and Lindsay. ("She reiterated (Lindsay's) statements...When she said that they would use the power of the government to put me jail, I assume that meant Mr. Lindsay also.") *See* Haas Testimony, August 2, 2000 Tr. at 192-193.

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176. Ms. Crabtree was quite specific in her threats of jail to Mr. Haas:

[By Mr. Haas:] To the end [of the meeting] Laura Crabtree was continuing to reiterate the need for absolute secrecy on this. I broached her with a question that what if I was approached by Virginia Apuzzo, which was a higher level government executive several levels above her and questioned me on the subject, what was I to tell her? And she said nothing. I said you mean if I tell Virginia Apuzzo or my wife, you know, what are you going to do to me? She said well, in fact, there will be a jail cell with your name on it.

See Haas Testimony, August 2, 2000 Tr. at 192.

177. Showing his awareness of the legal implications of his threats, Mark Lindsay also sought legal consultation from a fellow lawyer in the OA, Adam Greenstone, Esq., on the issue of whether or not it was legal to tell employees not to record information about the Mail2 problem. *See* Lindsay Testimony, August 23, 2000 Tr. at 74-78.

178. Lindsay also told Clinton-Gore White House political appointee Kathleen Gallant that she was not to take notes about Mail2 or speak to anyone about it, but later lied and denied that he had said this to her. *See* Gallant Testimony, August 1, 2000 Tr. at 112 - 116.

179. Ada Posey, who hired Lindsay for the Clinton-Gore White House, testified that Lindsay was not straightforward or candid. *See* E-Mail Hearing Testimony of Ada Posey (hereinafter "Posey Testimony"), August 17, 2000 Tr. at 34 - 37.

180. The evidence adduced to date shows that not only did Mark Lindsay and Laura Crabtree threaten EOP contractors, but Lindsay is lying to this court when he says he cannot remember the threats or any meeting when he made the threats. *See* also Lindsay Testimony, August 23, 2000 Tr. at 85 - 89.

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181. Haas took these threats from his White House government managers so seriously that he expressed fear for his, and the safety of him and his family. Ms. Hall testified quite directly:

> [By Ms. Hall:] [Haas] said he was afraid for his life. He knew a lot of the information in there [in the Project X e-mail]. He was afraid that his company would be taking in the responsibility for the programming glitch. He was – he told me that he was afraid for his life. He lived a long ways away. He was afraid for his family, he was afraid for himself. He had been threatened by several government managers.

See E-Mail Hearing Testimony of Sheryl Hall (hereinafter "Hall Testimony"), July 31, 2000 Tr. at 98.

182. As did Ms. Lambuth, Haas knew that the White House could follow through on these threats. *See* Hall Testimony, July 31, 2000 Tr. at 99.

183. Haas also told Ms. Lambuth of his concerns for his life, which were directly connected to the threats and the incriminating Project X e-mail he saw on Filegate and other Clinton-Gore scandals. *See* Lambuth Testimony, August 1, 2000 Tr. at 32-33.

184. Haas also expressed concerns about his family and the security of his home to Howard "Chip" Sparks because of his involvement in Project X. *See* Sparks Testimony, August 16, 2000 Tr. at 87-89.

185. Sandra Golas, another contractor for Northrup Grumman, was also a victim of these threats by Crabtree and Lindsay. Golas testified that the threats were made during the same meeting about which Ms. Lambuth and Mr. Haas testified:

> [By Ms. Golas:] Ms. Crabtree called Mr. Lindsay, put him on a speaker phone. He spoke to us and told us that this a very serious situation that we should...take this very seriously; that we should not talk with anybody about it. I don't remember all the details, but that was the jest [sic] of his conversation. I think – I don't remember everything. I know that when the conversation

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terminated Laura proceeded to – Ms. Crabtree proceeded to give us some more instructions.

[By Mr. Klayman:] What were those instructions?

[By Ms. Golas:] Pretty much she reiterated what Mr. Lindsay had said about the seriousness of the – there were some comments made about – somewhere in the conversation that somebody said somebody [sic] about jail. I'm not sure who said it. I do know there was some reference to it. It sounded very, very serious. We were told to treat it very – they said it was a very, very serious situation; that we shouldn't talk to anybody. We were also told not to talk to Mr. Hawkins and Mr. Wright.

E-Mail Hearing Testimony of Sandra Golas (hereinafter "Golas Testimony"), August 2, 2000 Tr. at 39-40.

186. The threats caused Ms. Golas to nearly lose her job. In a key incident in this case, rather than tell her government and Northrop Grumman supervisors about Project X after being threatened with job loss, Ms. Golas put her job at risk because she took the threats so seriously:

[By Ms. Golas:] Mr. (Steve) Hawkins [her Northrop-Grumman supervisor] and I had a conversation at which he got very loud and told me that I had 30 minutes to tell him what was going on or I could pack my bags..He said [a little later], you know, you're bordering on being insubordinate, and I looked at him and I said if it's a choice of being insubordinate or going to jail, I guess I'll have to go be insubordinate.

See Golas Testimony, August 2, 2000 Tr. at 75-77.

187. Ms. Golas told Mr. Haas about this encounter and Mr. Hawkins' threat to fire her. Mr. Haas then told Mark Lindsay about the situation and asked him to intervene on Ms. Golas' behalf. Mark Lindsay then called Hawkins and insisted that Hawkins come to the phone and speak with him. After this conversation, Mr. Hawkins dropped the matter with Golas. *See* Golas Testimony, August 2, 2000 Tr. at 76-78.

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[Supp.]E. **The Clinton-Gore Justice Department's Proposed Finding That "Mark Lindsay Spoke With Hawkins to Defuse the Misperception About Secrecy That NG Employees Harbored" (Clinton-Gore Mem at 24) is False.**

187a. Lindsay did not "[defuse]" any "misperception" about the threats when he spoke with Northrop Grumman's Hawkins. Rather, he reinforced the threats by refusing to tell Hawkins what Haas, Golas and Spriggs were working [on], despite the fact that none of the work being performed by Northrop Grumman employees under the contract required a secret or top secret clearance. *See* H. Ex. 120 at 2, n.1 (Vasta's "Summary of Project X Discussions" dated September 9, 1998); *see also* Vasta Testimony, November 3, 2000 (afternoon) Tr. at 29 - 30.

188. The threats caused Ms. Lambuth to lose her contracting job at the Clinton-Gore White House after she refused, because of the threats, to tell Steve Hawkins about Project X. *See* Lambuth Testimony, August 1, 2000 Tr. at 42-53.

[Supp.]F. **The Clinton-Gore Justice Department's Proposed Finding That "NG Relocated ... Hawkins [So That] the NG Employees Lacked Both the Mandate and Guidance They Required from Their Management to Address the Mail2 Problem" (Clinton-Gore Mem at 18) is False.**

188a. After the discovery of the Mail2 problem, Hawkins told Northrop Grumman that he wanted to leave the project as soon as he was able, when his one-year mandatory term concluded at the end of 1998. *See* Vasta Testimony, November 3, 2000 (morning) Tr. at 28 - 30.

188b. However, Northrop Grumman arranged for Hawkin[s] to leave the project early, bringing in Vasta in August 1998 to train him for Hawkins' position. *See* Vasta Testimony, November 3, 2000 (morning) Tr. at 29. This raises a strong evidentiary inference that Northrop Grumman participated in the Clinton-Gore White House's and Clinton-Gore Justice

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Department's cover-up which sought to threaten, isolate and remove anyone with knowledge of the Mail2 problem.

189. Ms. Lambuth was at a doctor's appointment when the confrontation between Hawkins and Ms. Golas occurred. Ms. Golas, upset and crying, called her and Ms. Lambuth came back to the White House to talk with Hawkins:

[By Ms. Lambuth:] The person's office (Steve Hawkins) was in happened to be another manager (R.C. Cavazos) who works for the same company that I work for. Basically in talking to Steve he said that we had to tell him [about Project X], I had to tell him, Sandi (Golas) had to tell him, that he was the prime [contractor], I was the sub [-contractor], and we basically listened to what the prime says. I told him that I could not tell him. I told him again about the threats, you know, we couldn't talk about this project. He turned around and said, see, she's insubordinate. She will be removed from the project for not talking to me about this.

[By Mr. Klayman:] She, meaning you?

[By Ms. Lambuth:] Yes.

See Lambuth Testimony, August 1, 2000 Tr. at 46-47.

190. That these threats occurred is not in dispute. Knowledge of the threats was common currency in the Clinton-Gore White House. Several witnesses in this case testified to learning of them in the course of their work in the Clinton-Gore White House -- Sheryl Hall, [Tony] Barry, Karl Heissner and Howard "Chip" Sparks among them. *See* Hall Testimony, July 31, 2000 Tr. at 96-101; Barry Testimony, August 18, 2000 Tr. at 116-118; Testimony of Karl Heissner (hereinafter "Heissner Testimony"), August 15, 2000 Transcript at 71-72, 88-89; Sparks Testimony, August 16, 2000 Tr. at 54-58.

191. Kathleen Gallant, Associate Director for Information Systems & Technology, was a political appointee with the Clinton-Gore White House OA and a superior to Laura Crabtree.

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Ms. Gallant called a meeting and was told by all the Northrop Grumman employees of Crabtree's threats. *See* Gallant Testimony, August 1, 2000 Tr. at 106.

192. At that meeting, not one Northrup Grumman employee said the threats had not occurred. *See* Gallant Testimony, August 1, 2000 Tr. at 137.

193. Because of the threats, Ms. Gallant removed Crabtree from Project X. *See* Gallant Testimony, August 1, 2000 Tr. at 136; Declaration of Kathleen Gallant, May 10, 2000 at ¶8.

194. The threats caused a very significant delay in the recovery of the e-mail. The Northrop Grumman team was forced to meet in a park and a coffee shop to discuss the problem, slowing the project down. *See* Lambuth Testimony, August 1, 2000 Tr. at 54; Golas Testimony, August 2, 2000 at 90.

195. After Betty Lambuth was removed, Northrop Grumman and the Clinton-Gore White House managers took the Northrop Grumman employees off of Project X and assigned them to other jobs, leaving no one to work on correcting the problem. *See* Golas Testimony, August 2, 2000 Tr. at 113; Lambuth Testimony, July 13, 2000 Tr. at 91; Gallant Testimony, August 1, 2000 Tr. at 236.

196. In August, 1998, Ms. Gallant had to suggest the intervention of Northrop Grumman legal counsel to get the ball rolling again on fixing Mail2 and to reassure the Northrop Grumman employees. *See* Gallant Testimony, August 1, 2000 Tr. at 129.

197. As a result of these threats, the "bleeding" in the Mail2 server was not stopped for six months (November, 1998), causing additional e-mail to be non-records managed and lost to this Court.

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198. No one was ever punished for the threats and nothing was ever done to recover the missing e-mail, or to report the incident to the proper authorities, including this Court.

199. The President never even discussed the threats with his Chief of Staff earlier this year despite their prominence in this Court, Congress, and the news media.

200. The threats are material to this proceeding:

[By Mr. Klayman:] And the threats having been in made in the context of Mail.2, you wouldn't have sluffed it off as immaterial, would you.

[By Mr. Ruff:] Certainly not.

See E-mail Hearing Testimony of Charles F. C. Ruff (hereinafter "Ruff Testimony"), August 28, 2000 at 74.

[Supp.]G. The Clinton-Gore Justice Department Submitted a False Finding That "None of the Testimony Shows That the Purpose of this Alleged Threats Was to Impede the Disclosure of Relevant Evidence in this Case" (Clinton-Gore Mem at 95) as Demonstrated by the Following Findings.

200a. Northrop Grumman employees re-discovered the Mail2 problem as early as May 16, 1998. *See* H. Ex. 9-10 (Meeting minutes dated May 16, 1998 discussing the problem); H.Ex. 9-65 (same).

200b. At a meeting on September 3, 1998, Haas told Hawkins and Vasta that he had been threatened to keep quiet about the Mail2 problem so that Barry could plausibly -- albeit falsely -- deny knowledge of the problem when he testified, without risk of being caught in a perjury trap. *See* H. Ex. 120; Vasta Testimony, November 3, 2000 (afternoon)Tr. at 25.

200c. While Vasta's notes reflect that Barry was going to testify "on Capitol Hill" (*see* H. Ex. 9-120), he testified that he "did not know who [Barry] was appearing before," and there is

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no evidence that Barry testified on Capitol Hill in June 1998, when the threats were being made. *See* Vasta Testimony, November 3, 2000 (afternoon) Tr. at 25.

200d. Barry did testify in a deposition in this case on June 11, 1998, however. *See* H. Ex. 50.

200e. Lindsay clearly was aware of this case, and he also clearly was aware that Barry was going to be deposed in this case in June 1998. *See* Lindsay Testimony, August 23, 2000 Tr. at 107 - 08, 177 - 179.

200e. The fact that the Northrop Grumman employees understood that Lindsay's threats were made to insure that Barry could plausibly -- albeit falsely -- deny knowledge of the Mail2 problem when he testified, and the fact that the Barry's only testimony in June 1998, when the threats were made, was at his deposition in this case, raises a strong evidentiary inference that Lindsay threatened the Northrop Grumman employees so that Barry would give false testimony at his deposition in this case.

200f. Also, the one e-mail that has been produced by the Clinton-Gore White House, based upon its search of the very small number of tapes that have been reconstructed to date, is directly relevant to Filegate. The e-mail is from Liza Wetzl, who was Craig Livingstone's assistant in the Office of Personnel Security ("OPS"), the office where the FBI files of Plaintiffs and hundreds of other Reagan and Bush Administration appointees, employees and others were obtained and stored. The e-mail[was] sent to Ed Hughes, another OPS staffer. It shows that Wetzl had legal concerns about Filegate, and attached to the e-mail is a *Washington Post* article about First Lady Hillary Rodham Clinton, a defendant in this lawsuit, being questioned under oath by the Office of Independent Counsel. The distribution list on the e-mail demonstrates that

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Wetzl sent the e-mail to key officials in the Clinton-Gore White House Counsel's Office, including Lanny Davis, Sally Paxton and Michelle Peterson. *See* Attachment to Supplemental Discovery Response By The Executive Office of The President Regarding Haas "Zip" Disk, Archived Hard Drives, and Non-ARMs Email filed August 29, 2000 (Proposed H. Ex. 145).

200g. **The fact that this key e-mail was found even though only approximately 25 out of approximately 3,400 tapes were searched shows that the Clinton-Gore White House has been able to conceal a significant number of relevant documents from the Plaintiffs on the back up tapes by virtue of Barry's false Declarations and testimony and other misconduct in this case.**

J. Clinton-Gore White House Threats Obstructed Court's Processes and Testimony of Witnesses.

201. These threats have resulted in less than forthright testimony before this Court by at least one of the victims. Because of the threats he suffered, Robert Haas is not telling the truth when he denies that he told anyone he felt in fear for his life and that he found incriminating e-mail in the Project X e-mail on Filegate and a host of other Clinton scandals. *See* Haas Testimony, August 2, 2000 Tr. at 187-190; Haas Testimony, August 15, 2000 Tr. at 22-23.

202. Because of the threats made to him by White House officials over Mail2, Haas was in fear for his life. *See* Hall Testimony, July 31, 2000 Tr. at 98-99; Lambuth Testimony, August 1, 2000 Tr. at 32.

203. This was corroborated by Mr. Sparks' testimony. *See* Sparks Testimony, August 16, 2000 Tr. at 54-57, 87-89.

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204. The testimony of Ms. Hall and Ms. Lambuth is also clear that Haas told both of them that he found incriminating Filegate and other Clinton-Gore scandal e-mail. *See* Hall Testimony, July 13, 2000 Tr. at 24.

[Supp.]H. **The Clinton-Gore Justice Department Submitted a False Finding That "With The Exception Of Two E-Mails, Haas Never Read Any Of Them" (Clinton-Gore Mem at 33) As Demonstrated by the Following Rebuttal Findings.**

204a. Haas clearly reviewed the e-mails that he located in re-discovering the Mail2 problem in May/June 1998. Both Sheryl Hall and Betty Lambuth testified that Haas made independent statements to this effect. *See* Hall Testimony, July 31, 2000 Tr. at 96-99; Lambuth Testimony, August 1, 2000 Tr. at 22-34.

204b. The testimony of Sheryl Hall and Betty Lambuth is more credible, and entitled to more weight on this point, because Haas could not admit to reviewing other persons' e-mail without risk to his job and his future. Haas was only allowed to review other persons' e-mail, in the course of his duties, when specifically ordered to do so. *See* Haas Testimony, August 2, 2000 Tr. at 207-210; Hall Testimony, July 31, 2000 Tr. at 99-101, 103-104; Lambuth Testimony, August 1, 2000 Tr. at 33-34.

204c. Further, Hall testified that Haas was known to read other people's e-mail while performing his duties. *See* Hall Testimony, August 11, 2000, Tr. at 33-34.

205. This was also corroborated by Mr. Sparks. *See* Sparks Testimony, August 16, 2000 Tr. at 56.

206. Haas admitted to Sheryl Hall that he felt compelled to deny that he saw incriminating e-mail relating to Filegate and other scandals because that he feared for his life. *See* Hall Testimony, July 31, 2000 Transcript at 101-104.

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207. The evidence is that a Clinton-Gore White House contractor, Robert Haas, was afraid he would be murdered because of the incriminating information he had found relating to Filegate and other scandals in the Project X e-mails and because of the threats he received from Clinton-Gore White House officials. *See* Hall Testimony, July 31, 2000 Tr. at 38.

208. In order to protect himself, Haas gave documents about Project X to a White House official, Sheryl Hall. *See* Hall Testimony, July 31, 2000 Tr. at 96-98.

209. Even after the scandal broke in February, 2000, the threats caused hesitation on the part of witnesses to come forward. Betty Lambuth testified how she was still hesitant because of her fears of what would happen to her friends and former colleagues at the Clinton-Gore White House. *See* Lambuth Testimony, August 1, 2000 Tr. at 96.

210. And Howard "Chip" Sparks has testified how these threats and the general Clinton-Gore mode of retaliatory and intimidatory conduct continues to keep witnesses from coming forward to this Court with relevant information. *See* Sparks Testimony, August 16, 2000 Tr. at 80-81, 86-89.

211. As described below, Northrop Grumman officials also knew of the threats. *See, e.g.,* Haas Testimony, August 14, 2000 Tr. at 54-61.

[Supp.]I. **The Clinton-Gore Justice Department's Proposed Finding That "The Instructions Concerning Confidentiality Were Soon Countermanded" (Clinton-Gore Mem at 23) is False as Demonstrated by Initial Findings 201 - 211, 422 - 430 and the Following Rebuttal Findings.**

211a. The is no evidence of record demonstrating that the threats were ever retracted or withdrawn. In fact, threats were on-going. For instance, in September 1998, the Northrop Grumman employees met with Vasta and discussed the threats, about which they were still

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concerned. *See*, H. Ex. 120; Vasta Testimony, November 3, 2000 (morning) Tr. at 30;Vasta Testimony, November 3, 2000 (afternoon) Tr. at 2 - 6.

211b. The effect of the threats persisted for months. "[P]rogress wasn't being made ... employees still were afraid to work on the project, and they still refused to work on it." Gallant Testimony, August 1, 2000 Tr. at 127. The threats prevented the efficient resolution of the Mail2 problem. *See* Vasta Testimony, November 3, 2000 (afternoon) Tr. at 132.

211c. Even as late as April 1999, the Clinton-Gore White House retaliated against Vasta and Northrop Grumman by issuing a factually inaccurate, negative fee award determination after the publication of the *Insight* article. *See* H. Ex. 123, 131; Vasta Testimony, November 3, 2000 (afternoon) Tr. at 39 - 42, 120, 128-133.

211d. In claiming [that] Haas discounted the threats made against him, the Clinton-Gore White House completely ignores the testimony of Howard Sparks that Haas continued to feel threatened. Mr. Haas approached Mr. Sparks in Sparks' office to discuss a "fairly upsetting" issue with him. Sparks Testimony, August 16, 2000 Tr. 54.

211e. Mr. Haas told Sparks that he was aware of e-mail coming into the White House that was not being records managed that concerned the Lewinsky scandal and other Clinton Administration scandals. Sparks Testimony, August 16, 2000 Tr. 56-57.

211f. Mr. Haas told Mr. Sparks that he had been threatened with jail "over some [of these e-mail] that he had found." Mr. Haas seemed concerned and frightened to Mr. Sparks, and Haas "shut up" whenever there was a knock at the door of Sparks' office. Sparks Testimony, August 16, 2000 Tr. 55.

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211g. During the Spring 2000 hearings before the House Government Reform and Oversight Committee regarding the missing e-mail, Mr Haas told Mr. Sparks that he "fear[ed] for his family" and for "the security of his home." Sparks Testimony, August 16, 2000 Tr. 87-88. Mr. Haas was also afraid that the Department of Justice might enter his home and take his computer:

> "...Bob was very concerned, because he has a system at home that has a Zip disk a[nd] a Zip drive in it, and he was afraid that there would be an indication that this had happened, you know, he had some home records on his PC, and then people would, you know, obviously Justice Department or whatever would come to him and try to take his machine in order to determine whether or not it had files on it."

Sparks Testimony, August 16, 2000 Tr. at 88.

211h. The Clinton-Gore Justice Department also completely ignores the nature and source of the threats. The threat was that these employees would lose their jobs and go to jail. The threats were made by Mark Lindsay who was the General Counsel for the Clinton Gore Office of Administration and later became its Director. Thus, the threats of severe personal harm were made by someone who spoke for the White House and who has remained in a position of authority over Haas, Golas and Spriggs to this day. Moreover, Lindsay later became Assistant to the President, a position of even greater authority. Lindsay Testimony, August 22, 2000 Tr. at 137, 152-53. This shows that the threats are substantial and weighty and have not been "countermanded." Nor can they be until Lindsay is removed.

211i. The Clinton-Gore Department of Justice's reliance on Hawkins' characterization of Haas as "childish" also ignores the fact that Hawkins himself kept quiet

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when Lindsay told him to. When Hawkins asked Lindsay what his employee, Golas, was working on for Lindsay, Lindsay refused to tell Hawkins, stating that "[Hawkins] did not have a need to know." *See* H. Ex. 120, n.1. Following this encounter with Lindsay, Hawkins dropped the Mail2 matter entirely. It was only when Haas, Golas and Spriggs approached Vasta in August/September, 1998, that Hawkins was forced to break the silence and do something about Mail2. *See* H. Ex. 120; Vasta Testimony, November 3, 2000 (morning) Tr. at 32-34.

K. As a Result of the Threats and Fraudulent Secrecy Requirements Imposed on Some Who Knew about the Mail2 Problem, E-mail Evidence Was Lost Forever.

212. In January 1998, Kathy Gallant joined the OA as the Associate Director for Information Systems and Technology ("IS&T"). *See* Gallant Testimony, August 1, 2000 Tr. at 105-06.

213. In this position, Gallant had general responsibility for computer operations within the OA. *See* Gallant Testimony, August 1, 2000 Tr. at 106.

214. As part of these responsibilities, Gallant maintained the back up tapes for the e-mail servers. *See* Gallant Testimony, August 1, 2000 Tr. at 201-02.

215. Due to a shortage of funds for purchasing new back up tapes, Gallant and her staff formulated a plan for recycling old back up tapes by writing over them. *See* Gallant Testimony, August 1, 2000 Tr. at 202.

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216. Gallant asked OA counsel for permission to implement this plan but never received a response. *See* Gallant Testimony, August 1, 2000 Tr. at 202.

217. At that time, OA counsel was Mark Lindsay. *See* Lindsay Testimony, August 22, 2000 Tr. at 145-146.

218. Gallant then asked again for permission to implement the plan and indicated that she would go forward with it if there still was no response. When she received no response, she went forward with the back up tape recycling plan. *See* Gallant Testimony, August 1, 2000 Tr. at 202.

219. Because Gallant had not been told about the Mail2 problem at that time, she did not realize that her tape recycling program would result in e-mail being permanently lost. *See* Gallant Testimony, August 1, 2000 Tr. at 203.

220. Robert Haas, and other Northrop Grumman contractor[s] who was aware of the Mail2 problem, recognized that the back tape recycling program would make it impossible to recover the un-archived e-mail. *See* Haas Testimony, August 14, 2000 Tr. at 179; Haas Testimony, August 15, 2000 Tr. at 43-44.

221. Haas, because of the threats and secrecy requirements, felt he could not tell Gallant directly to stop the recycling to protect evidence from being destroyed. Eventually, Betty Lambuth conveyed the necessary information to Gallant and the recycling program was halted. *See* Haas Testimony, August 15, 2000 Tr. at 44.

222. However, six months of un-archived e-mail, which now can never be searched in response to Plaintiffs discovery requests, had already been destroyed. *See* Gallant Testimony, August 1, 2000 Tr. at 201-203.

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223. On June 1, 1998, Virginia Apuzzo, sent an e-mail "Memorandum For All EOP Lotus Notes E-Mail Users" concerning "Lotus Notes E-Mail Disk Space Shortage and What You Can Do to Help." *See* H. Ex. 9-16.

224. This e-mail memorandum stated that "[b]ecause an archival copy of each e-mail is created when a message is sent, from a records management perspective, users can feel free to delete unneeded files from their desktop." *See* H. Ex. 9-16.

225. This e-mail memorandum advised users to periodically review their e-mail and delete any unneeded messages. *See* H. Ex. 9-16.

226. Any messages deleted by users affected by the Mail2 problem prior to the "bleeding" being stopped in November, 1998, are not archived on ARMS. *See* Hall Testimony, July 31, 2000 Transcript at 152-154.

227. By encouraging users to read and delete e-mail quickly, Apuzzo's e-mail memorandum ensured that e-mail would be deleted before it was copied to a back up tape during the normal, periodic back ups. *See* Hall Testimony, July 31, 2000 Transcript at 152-154.

228. For the users affected by the Mail2 problem, this means those e-mails are lost forever, as they are not on ARMS, were not backed up, and cannot be reconstructed as a result. *See* Hall Testimony, July 31, 2000 Transcript at 152-154.

229. On March 24, 1999, Apuzzo sent a follow-up e-mail memorandum to a broad range of e-mail users including those affected by the Mail2 problem reminding them to delete e-mail. *See* H. Ex. 9-16 at E0545.

230. The Apuzzo memorandum of June 1, 1998 urging the deletion of unarchived e-mail was never rescinded and therefore continues to be in effect to this day. *See* E-Mail Hearing

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Testimony of Virginia Apuzzo (hereinafter "Apuzzo Testimony") September 22, 2000 Tr. at 62, H. Ex. 9-16.

231. Ms. Lambuth was aware that this memo was disseminated and, to no avail, told her superiors that the Apuzzo e-mail memorandum would cause e-mail to be lost. See Lambuth Testimony, August 1, 2000 Tr. at 13-14, 55-58.

232. The issuance of the Appuzzo e-mail memorandum and the failure to rescind it after the Northrop Grumman employees found the Mail2 problem undoubtedly caused relevant e-mails material to this case to be lost forever.

L. Barry and Clinton-Gore Justice Department Lawyers Present False Deposition Testimony to This Court.

233. Almost contemporaneously with these threats and resultant lost e-mail, Barry was designated by the EOP to give testimony in this case on "how personnel at the Clinton White House communicate, exchange information and store communications and information" and "to confirm that the Clinton White House's e-mail, computer files and electronically-stored information were readily accessible." *See* Plaintiffs' Opposition to the Executive Office of the President's Motion for Protective Order, dated March 18, 1998 at 2, 3.

[Supp.]J. The Clinton-Gore EOP Has Admitted That Barry was the Most Knowledgeable Person on ARMS.

233a. The Clinton-Gore White House admits in its proposed findings that it designated Barry as the witness to testify on "e-mail systems at ... the White House Office and the Office of

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Administration" because he was "the person most knowledgeable about ... ARMS...." *See* Clinton-Gore Mem. at 12.

234. On June 9 and June 10, 1998, in preparing for this deposition, Barry met for about ten hours with Sally Paxton, an attorney in the Clinton-Gore White House Counsel's Office, James Gilligan and Julia Fayngold-Covey. August 3, 2000 Tr. at 122-124, 179-180.

[Supp.]K. **The Clinton-Gore Justice Department's Proposed Finding That "Because Barry Was Comfortable With These Substantive Areas, He Did Not Review Them With Justice Department Counsel and Clinton-Gore White House Counsel When They Met With Him To Prepare For his Deposition" (Clinton-Gore Mem at 13) is False as Demonstrated by Initial Findings 60 - 61, 234, 239 and the Following Rebuttal Findings.**

234a. Several months prior to his deposition, Barry had reviewed the substance of the statements in his Declarations, not just their procedural aspects, with lawyers in the Clinton-Gore White House Counsel's Office and the Clinton-Gore Justice Department. On March 23, 2000, Paxton sent Barry a facsimile copy of Plaintiffs' Opposition to the Executive Office of the President's Motion for Protective Order, dated March 18, 1998. The facsimile cover sheet states that Paxton and Barry had "discussed" the contents. Barry later forwarded this facsimile of his Declaration to Lindsay, requesting that he "review" it and give "guidance" to Barry regarding its contents. *See* H. Ex. 48. The Declarations covered the same subjects as those covered at the deposition.

234b. During the ten hours that Barry spent with the Clinton-Gore Justice Department and Clinton-Gore White House Counsel attorneys preparing for his deposition, they discussed "searches, how searches are performed, how long they take, what kind of searches we can do in ARMS, all related to ARMS. I believe there was also discussions of the e-mail reconstruction

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project, the All-in-One e-mai[]l reconstruction project of which I was a project manager." *See* Barry Testimony, August 3, 2000 Tr. at 125. The record is clear that Barry spent a extensive amount of time, since learning of the Mail2 problem, interacting with attorneys from the Clinton-Gore White House Counsel's Office, as well as from the [Clinton Gore] Department of Justice. Barry's personal diaries illustrate the time he spent with Clinton-Gore White House attorneys and [Clinton Gore] Department of Justice attorneys. *See* H. Ex. 40 at E282. In addition, Barry spent time in phone conversations with Clinton-Gore [W]hite House attorneys and [Clinton Gore] Department of Justice attorneys discussing Mail2 and ARMS problems and concerns. *Id.*

234c. Barry's personal diary entries dating from December 12, 1997 through March 15, 2000 indicate specific meetings and conversations Barry had with Clinton-Gore White-House and [Clinton Gore] Justice Department attorneys. Many of these meetings and conversations reference specific topics relating to ARMS and MAIL2 problems. These entries include conversations with Sally Paxton of the Clinton-Gore White House Counsel's Office and Jim Gilligan from the [Clinton Gore] Department of Justice specifically mentioning difficulties with e-mail. H. Ex. 40 at E2836. An entry [r]eferencing Mike Imbroscio specifically mentioning the status of the December and January searches. *Id.* at E2842. An entry to a meeting with Paxton and Mark Lindsey from the Clinton-Gore White House Counsel's Office and Jim Gilligan from the [Clinton Gore] Department of Justice. An entry referencing a conversation with Paxton and Lindsey specifically mentioning the e-mail system. *Id.* at E2899. An entry referencing Jim Gilligan specifically mentioning formatting the e-mail system. *Id.* at E2907. There are numerous other examples where [Clinton Gore] White House Counsel and [Clinton Gore] Department of Justice attorneys met with Barry to discuss the Mail2 problem.

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235. During this deposition, Clinton-Gore DOJ counsel elicited false sworn testimony from Barry that incoming Clinton-Gore White House e-mail was being records-managed:

[By Mr. Gilligan:] Mr. Favish was speaking to you earlier, Mr. Barry about a situation he posited where somebody working in the White House would sent an E-mail from desk top PC to somebody in Idaho; do you recall that?

[By Mr. Barry:] Yes
[By Mr. Gilligan:] An E-mail of that kind, would that be stored in the Automated Records Management System?

[By Mr. Barry:] Yes, it would.
[By Mr. Gilligan:] How about the reverse, if an E-mail came in to Idaho to somebody's desk top PC in the White House would that also be found stored in the Automated Records Management System?

[By Mr. Barry:] If it was directed to their E-mail ID at the EOP, yes, it would be.
[By Mr. Gilligan:] Thank you, sir.

See June 11, 1998 Deposition of [Tony] Barry at 282-283 (H. Ex. 50), see also Barry Testimony, August 3, 2000.

236. Barry testified repeatedly that all e-mails since 1994 had been properly captured, or were being records managed in a manner that allowed them to be searched in response to subpoenas and document requests:

[By Mr. Favish:] The E-mail messages from July 14, '94, onward, are they are one hard drives now, are they on tapes, are they on both, what are they on?

[By Mr. Barry:] They currently reside in the ARMS, Automated Records Management System data warehouse.

See June 11, 1998 Deposition of [Tony] Barry at 145 (H. Ex. 50)

[By Mr. Favish:] If somebody did send or receive E-mail on their official account from home, would be backed up and archived just as if it were sent from within their office.

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[By Mr. Barry:] Yes.

See June 11, 1998 Deposition of [Tony] Barry at 274 (H. Ex. 50)

237. Barry specifically testified that no e-mail information had been lost, when in fact at least six months of e-mail had been overwritten and lost. *See* June 11, 1998 Deposition of [Tony] Barry at 229-33 (H. Ex. 50), Gallant Testimony, August 1, 2000 Tr. at 201-203.

238. At his deposition on June 11, 1998, Barry testified categorically that electronic mail that was transmitted from an external source to an individual at the Executive Office of the President with an electronic mail identification number would be stored in the ARMS. This deposition testimony was false. *See* June 11, 1998 Deposition of [Tony] Barry at 282-284 (H. Ex. 50); August 25, 2000 Tr. at 9.

239. Barry spent eight (8) to ten (10) hours preparing for this deposition, and spent five (5) of these hours with Clinton-Gore Justice Department counsel James Gilligan and Clinton-Gore White House counsel Sally Paxton. *See* June 11, 1998 Deposition of [Tony] Barry at 37 (H. Ex. 50).

240. [Tony] Barry's March 4, 1998 and March 30, 1998 Declarations and his June 11, 1998 testimony, in addition to his subsequent July 9, 1999 Declaration (described below), do not mention the persistent and ongoing failure of ARMS to records manage EOP e-mail, as described in the preceding findings. *See* H. Ex.18, 21, 42, 44.

241. On July 10, 1998, Barry wrote an e-mail to his supervisor, detailing how he:

...spent about 10 hours this week reading and marking up my declaration [sic] in the Alexander case. I faxed the pages that needed changing to Julia Feingold [sic] at DOJ and she is to submit the changes for inclusion into the final. I spend [sic] a considerable amount of time this week

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working on the Mail2 problem. *See* H. Ex. 9-114, Barry Testimony, August 14, 2000 Tr. at 73-74.

242. Despite Barry's working on the Mail2 problem at the same time he was preparing an errata sheet for his previous deposition testimony, neither Barry nor his Clinton-Gore White House Counsel ever corrected the falsehoods in Barry's deposition. *See, e.g.*, H. Ex. 23.

243. In fact, a transcript of Barry's deposition shows that he[,] or someone in Clinton-Gore White House or **[Department of Justice,]** specifically highlighted and/or underlined Barry's false testimony, obviously because they were concerned about being caught. *See* H. Ex. 50.

M. Top Clinton-Gore White House and Justice Department Officials Knew of Mail2 But Did Nothing to Correct the Problem or Alert the Court and Other Proper Authorities.

244. Contemporaneous with the threats and false testimony, virtually all relevant top Clinton-Gore White House officials knew of the Mail2 problem at least as early as May/June 1998. The Mail2 problem was reported almost immediately to senior aides to President Clinton, including OA General Counsel Mark Lindsay, OA Director Ada Posey, Assistant to the President for Management and Administration Virginia Apuzzo, Counsel to the President Charles F.C. Ruff, and Deputy Chief of Staff John Podesta. *See* Lindsay Testimony, August 23, 2000 Tr. at 5-6; Posey Testimony, August 16, 2000 Tr. at 171-72; Apuzzo Testimony, September 22, 2000 Tr. at 32-33, 67; Ruff Testimony, August 28, 2000 Tr. at 55, Podesta Testimony, October 10, 2000 Tr. at 40-43; H. Ex. 9-1– 9-5.

245. Each of these high-level **[Clinton-Gore]** White House employees comprehended the fundamental nature of the Mail2 problem and its adverse impact on the retrieval and

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production of documents in response to subpoenas, document requests, and other inquiries made to the Executive Office of the President. *See* Lindsay Testimony, August 23, 2000 Tr. at 53-59, 62-69; Posey Testimony, August 16, 2000 Tr. at 169-76; Apuzzo Testimony, September 22, 2000 Tr. at 32-35; Ruff Testimony, August 28, 2000 Tr. at 58-59; Podesta Testimony, October 10, 2000 Tr. at 36-37, 40-43.

246. Jason Baron, an attorney with the **[Clinton-Gore]** Department of Justice was the administration's *Armstrong* expert. *See* Baron Testimony, August 31, 2000 Tr. at 19-20, 47-48, 106.

247. Immediately upon learning of the Mail2 problem in May/June 1998, Mark Lindsay consulted Jason Baron on the potential impact of the Mail2 problem on *Armstrong's* document preservation requirements. Baron is lawyer with the Federal Programs Branch section of the Clinton-Gore Justice Department, the section which represents the Clinton-Gore EOP in this case. *See* Baron Testimony, August 31, 2000 Tr. at 45-62.

[Supp.]L. **The Clinton-Gore Justice Department's Proposed Finding That "Baron Concluded That the Mail2 Problem, as Described to Him by Lindsay, Did Not Implicate *Armstrong*" (Clinton-Gore Mem at 28) is False and Intentionally Misleading.**

247a. The Clinton-Gore Department of Justice's description of the meeting between Baron and Lindsay is completely at odds with the description provided by Baron and is not supported by Lindsay's testimony which was, at best, vague and self-serving. *Compare* Baron Testimony, August 31, 2000 Tr. at 45 - 53 *with* Lindsay Testimony, August 23, 2000 Tr. at 100 - 102, 106 -107, 110, 116-117.

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247b. In June or July of 1998, Lindsay called Baron to request that Baron brief him about the *Armstrong* case in the context of Mail2. *See* Lindsay Testimony, August 23, 2000 Tr. at 100 - 102; Baron Testimony, August 31, 2000 Tr. at 45 - 47. Baron then met with Lindsay. *See* Baron Testimony, August 31, 2000 Tr. at 45 - 47.

247c. Baron was repeatedly briefed on ARMS problems by Lindsay, worked on this case -- even to the extent of editing the ARMS-related declarations of [Tony] Barry, and worked closely with Barry generally. Th[i]s [raises] a strong evidentiary inference that Baron knew about Mail2, its impact on document production in this case and purposely did nothing to inform this Court about it.

247d. At the same time, Baron's testimony that he was essentially "duped" by Lindsay is not credible. Baron is the recognized expert on *Armstrong* and was in a meeting where he had been told, by his own admission, that e-mail was coming "into the complex, and was not being captured" due to a "computer glitch." *See* Baron Testimony, August 31, 2000 Tr. at 45 - 47, 50 - 51. Additionally, Baron was consulted on and was familiar with the *Alexander* case and worked with Gilligan and the other members of the *Alexander* trial team in the Federal Programs Branch. [*See*] Baron Testimony, August 31, 2000 Tr. at 31, 45-53, 87. Thus, Baron had reason to know about Mail2 and its impact on *Alexander* when he spoke with Lindsay. This gives rise to a strong evidentiary [inference] that Baron knew of Mail2 when he met with Lindsay and discussed it with him in more detail than either of these witnesses are now willing to admit.

248. After being informed of the Mail2 problem by Laura Crabtree, Lindsay also reported the problem to Posey and Apuzzo. *See* Lindsay Testimony, August 23, 2000 Tr. at 34-35.

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249. Lindsay requested to see Apuzzo at once, and Apuzzo made herself immediately available. *See* Apuzzo Testimony, September 22, 2000 Tr. at 32-33.

250. Lindsay informed Apuzzo that "they had discovered . . . a problem in the system in which e-mails were not being captured." *See* Apuzzo Testimony, September 22, 2000 Tr. at 32-33.

251. With Apuzzo's tacit approval, Lindsay also tried to cut Ada Posey, former Director of the OA -- which oversees IS&T operations -- out of the loop of Mail2. *See* Posey Testimony, August 17, 2000 Tr. at 33-38.

252. Eventually, Posey became so frustrated and upset about Lindsay's and Apuzzo's treatment of her[,] she asked to be relocated to another job. Chief of Staff John Podesta found her a job as an assistant to Bill Richardson, Secretary of the Department of Energy. *Id. at 41-46*

253. The evidence shows that Posey wanted a transfer because she was concerned about Mail2, Mark Lindsay's mishandling of it, and the dangers of being involved in an ongoing obstruction of justice. It can be also inferred that Podesta found Posey a job with Bill Richardson to ensure her continued participation in the cover-up. (Then-U.N. Ambassador Richardson had also offered a job [to] Monica Lewinsky, obviously to try to keep her quiet.)

254. Apuzzo "felt it was imperative to get the information over to the appropriate people." *See* Apuzzo Testimony, September 22, 2000 Tr. at 33.

255. Apuzzo requested "that a memo be drafted for [her] signature" to let John Podesta and Chuck Ruff know there was a problem. *See* Apuzzo Testimony, September 22, 2000 Tr. at 33.

256. Apuzzo understood that the Mail2 problem had serious legal implications:

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[By Plaintiffs' Counsel:] Mr. Lindsay told you that one of the difficulties here was the impact on document production, identification and retrieval of documents in response to information requests?

[By Apuzzo:] I'm sure that we got to that point, yes, sir.

See Apuzzo Testimony, September 22, 2000 Tr. at 34; *see also id.* at 93.

257. Given the serious legal implications of Mail2, Apuzzo wanted to ensure Ruff was directly informed about Mail2. *See* Apuzzo Testimony, September 22, 2000 Tr. at 35-38.

258. Given the serious legal implications of Mail2, Apuzzo also delegated the handling of the Mail2 matter to Lindsay, her chief counsel. She directed Lindsay to personally brief Podesta and Ruff. *See* Apuzzo Testimony, September 22, 2000 Tr. at 39.

259. A memorandum Apuzzo asked Lindsay to draft for her signature was entitled "*Technical Anomaly in Automated E-mail Records Management System*," and was prepared within "a matter of hours" from the time she learned about the problem. *See* H. Ex. 9-1– 9-5; *See* Apuzzo Testimony, September 22, 2000 Tr. at 49.

260. The memorandum dated June 19, 1998 was sent under Apuzzo's signature to Podesta and Ruff as a "red dot" memo. *See* Apuzzo Testimony, September 22, 2000 Tr. at 43, 45.

261. Apuzzo used red dots to identify important matters, and to bring such matters to her superiors' immediate attention. *See* Apuzzo Testimony, September 22, 2000 Tr. at 45-46.

262. The June 19, 1998 memorandum plainly described the ARMS system and its critical role in complying with subpoenas and other document requests, stating that[:]

> The main utility of the [ARMS] system is to provide a central e-mail repository with search and retrieval capability which ensures proper record keeping. *An*

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important function the system supports is the identification and retrieval of documents in response to information requests."

See H. Ex. 9-3, 9-4 (emphasis added).

263. The memorandum also clearly described the computer side of the Mail2 problem:

> This memorandum is to advise you of an anomaly in the system involving the Mail2 server, which primarily supports the day-to-day e-mail traffic of the White House Office (WHO). . . . In identifying which messages to save from Mail2, the ARMS system was designed to recognize user identifications with an electronic "stamp" which reads Mail2. However, when user identifications for WHO . . . were entered into the system, the majority were hand-keyed using all capital letters as MAIL2. Because ARMS was not programmed to recognize the all capital version, *messages in certain categories for these Mail2 users have not been captured by or transferred to ARMS.* These omitted types of e-mails include: Incoming Internet e-mail[.]

See H. Ex. 9-3, 9-4 (emphasis added).

264. The memorandum shows that high-level Clinton-Gore White House management actually knew as early as June 19, 1998 that there was a problem with the ARMS system associated with the [Clinton-Gore] White House's Mail2 server, that the problem resulted in a failure to archive e-mails in the "central e-mail repository" and that, therefore, records potentially responsive to outstanding subpoenas and document requests had not been searched. *See* H. Ex. 9-3, 9-4.

265. The fact that this "red dot" memorandum was addressed urgently by Apuzzo to the Deputy Chief of Staff, and forwarded to the Clinton-Gore White House Counsel, reflects the seriousness with which the Clinton-Gore White House viewed this problem. *See* Apuzzo Testimony, September 22, 2000 Tr. at 45-46.

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266. After sending the memo to Podesta and Ruff, Apuzzo directed Lindsay "to be certain that they [Podesta and Ruff] were both briefed in person." *See* Apuzzo Testimony, September 22, 2000 Tr. at 39.

267. On or about June 19, 1998, the same date as the Apuzzo memo, Lindsay orally briefed Podesta and Ruff on the Mail2 problem. *See* Lindsay Testimony, August 23, 2000 Tr. at 54-56, 62-63.

268. Ruff admits that he learned of the Mail2 problem on or about June 19, 1998 from either the Apuzzo memo or Lindsay's contemporaneous briefing. *See* Ruff Testimony, August 28, 2000 Tr. at 51-52; 56.

269. A note from Apuzzo stating that she had, that afternoon sent the memo to Podesta, is handwritten on Ruff's copy of the memorandum. *See* Ruff Testimony, August 28, 2000 Tr. at 55.

270. Upon learning of the Mail2 problem, Ruff understood that it related to the retrieval of documents in response to subpoenas and document[] requests in all cases, not just the Lewinsky case, including this case. ("In the sense that if this case involved an e-mail request for production, then it would certainly be covered by the retrieval system.") *See* Ruff Testimony, August 28, 2000 Tr. at 57; *see also [I]d.* at 66.

271. Ruff admits that he knew that Mail2 was a potential problem "which needed to be explored to determine whether there had been some infection of [the] problem into past subpoena compliance." *See* Ruff Testimony, August 28, 2000 Tr. at 61-62.

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272. Ruff knew that failure to comply with subpoenas and failure to produce documents requested from the Clinton-Gore White House could lead to obstruction of justice charges on par with Watergate *See* Ruff Testimony, August 28, 2000 Tr. at 66.

273. Ruff repeatedly admitted that problems with the integrity of Clinton-Gore White House document productions were his responsibility *See* Ruff Testimony, August 28, 2000 Tr. at 35-36; *see also id.* at 69, 116.

[Supp.]M. **The Clinton-Gore Justice Department Submitted a False Finding That "Podesta Had No Further Conversations With Lindsay About Mail2, and He Heard Nothing More About it Until The Year 2000" (Clinton-Gore Mem at 31).**

273a. John Podesta was "very much aware" in 1998 that the Clinton-Gore White House needed to comply with Congressional, Court, and Independent Counsel subpoenas, especially given the ongoing Lewinsky scandal. *See* Podesta Testimony, October 10, 2000, Tr. at 36.

273b. John Podesta's claim is not credible and must be rejected because: (1) he is ultimately in charge of Clinton-Gore White House operations; (2) he had expertise in technical areas; (3) he helped create the ARMS system for the Armstrong case (consulting with Jason Baron); (4) he received the Apuzzo memo, (5) he consulted with President Clinton over e-mail.

N. **Failures of Memory, Contradictory Testimony By Clinton-Gore White House Lawyers Belie Claims of Good Faith Concerning E-mail Scandal.**

274. On June 19, 1974, Ruff gave an interview to Bob Woodward of the *Washington Post*, in which he stated that if he were ever called to testify regarding the Watergate prosecutions at a future date, he would "say gee[,] I just don't remember what happened back then," so as to avoid indictment for perjury. Ruff Testimony, August 28, 2000 Tr. at 43-45.

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275. Ruff had the ultimate responsibility to ensure that the Clinton-Gore White House Counsel's Office "took appropriate steps" to deal with the Mail2 problem, including "ensur[ing] that searches were conducted and an appropriate response made to any subpoena or document request." Ruff Testimony, August 28, 2000 Tr. at 86, 117; *see also id.* at 123-124.

276. Ruff knew that the Mail2 problem infected Clinton-Gore White House document productions. *See* Ruff Testimony, August 28, 2000 Tr. at 83.

277. In order to determine the scope of the Mail2 problem, Clinton-Gore White House Counsel witnesses claimed that a test was performed on four persons' e-mail inboxes, to determine if the inboxes contained any unarchived e-mail from Lewinsky.

278. There is substantial contradictory testimony as to who ordered the purported test. *See* Lindsay Testimony, August 23, 2000 Tr. at 142-143 (Lindsay claims he cannot remember who ordered the test.); *compare id.* at 145 (Lindsay claims Ruff ordered the test.) *with* Ruff Testimony, August 28, 2000 Tr. at 63 (Ruff claims he did not order the test.) and E-mail Hearing Testimony of Cheryl Mill[s] (hereinafter "Mills Testimony"). September 1, 2000 Tr. at 65 (Mills claims not to remember if Ruff ordered the test.). *See also* Ruff Testimony, August 28, 2000 Tr. at 81-82 (Ruff did not give any specific instructions regarding the test's scope or conduct.).

[Supp.]N. **The Clinton-Gore Justice Department Proposed Findings That "Ruff Did Not Show [Mills] The Apuzzo Memorandum Describing the Mail2 Problem" And That "[Mills' Impression Was That The E-mail Problem Affected Only The Lewinsky Investigation, Not Any Other Case or Investigation." (Clinton-Gore Mem at 32) are Not Credible On This Record As Demonstrated by the Following Rebuttal Findings.**

278a. The Court has previously found incredulous the notion that Ruff did not show Mills the Apuzzo memo:

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THE COURT: I wish I had realized – of course I didn't realize what your [Mills'] testimony was going to be, so I didn't ask this of Mr. Ruff when he was here. Can you figure out why he wouldn't have shared this memo with you if you were the one who was going to do the follow up? Wouldn't his ordinary practice have been to whoever was going to take the action to give them the memo too or not?

* * *

THE COURT: Your testimony is that he never mentioned to you this whole part in here about MAIL2?

THE WITNESS: Correct . . ..

THE COURT: Wouldn't the ordinary practice have been to give it to someone for action?

THE WITNESS: He might have filed it. It just depends. Because of the nature of it, he might have kept those records, but he would definitely want to keep ti for himself to refer to. I truly don't know.

Mills Testimony, September 1, 2000 Tr. at 128-129. In fact, a review of Ruff's testimony leads to the inference that the memorandum was the basis of the discussion. *See* Ruff Testimony, August 28, 2000 Tr. at 79 ("I don't recall what I said to her specifically. We had a discussion in which the report is clear, which is that we needed to find out what the scope of the problem was and whether it had an impact on our production" (emphasis added)).

279. There is substantial contradictory testimony as to which four in-boxes were purportedly ordered tested. *Compare* Lindsay Testimony, August 23, 2000 Tr. at 143 (Lindsay claims Raines's and Lewinsky's in-boxes tested.) *with* Haas Testimony, August 2, 2000 Tr. at 200 (Haas claims Raines's and Lewinsky's in-boxes not tested.) (Lewinsky did not have an in-box.). *See* Mills Testimony, September 1, 2000 Tr. at 70-71 (Mills does not know which four in-boxes were tested.).

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280. Independent of any direction from the Clinton-Gore White House Counsel, Haas discovered approximately 400 e-mail documents from Lewinsky in Raines' in-box during a cursory search on or about June 20, 1998. *See* Haas Testimony, August 2, 2000 Tr. at 199-200; Haas Testimony, August 14, 2000 Tr. at 6, 29, 183.

281. These e-mail documents were the missing half of the Lewinsky e-mail correspondence that Barry had found in 1998, and consisted of incoming e-mails from Lewinsky that were not captured on ARMS. *See* Haas Testimony, August 2, 2000 Tr. at 207-208.

282. The documents were eventually transferred to Mills and Peterson. *See* Haas Testimony, August 14, 2000 Tr. at 14. *See also* Mills Testimony, September 1, 2000 at 72. Mills claims not to remember who gave her the documents. *Id.*

283. Peterson allegedly compared the newly-discovered e-mail documents compiled independently by Haas with documents that had already been produced in compliance with subpoenas in order to determine whether previous productions were complete. Peterson Testimony, August 28, 2000 Tr. at 200-203.

284. Peterson claims that she compared the newly-discovered e-mail documents with a control group of documents that had already been produced, finding that the two batches were identical, thus indicating that previous searches were adequate. Peterson Testimony, August 28, 2000 Tr. at 200-203.

285. Peterson claims that she discarded the control group as soon as the purported test was completed. Peterson Testimony, August 28, 2000 Tr. at 207.

286. In fact, after being confronted with hard evidence by the Office of Independent Counsel Ms. Peterson was forced to retract her false testimony about her so-called test of the e-

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mail. *See* Third Declaration of Michelle Peterson, September 27, 2000, H. Ex. 111 at attachment 2.

287. Neither Peterson nor Ruff ever reviewed any subpoena during the purported test to determine if any of the newly-discovered e-mails were responsive, despite the fact that such a review was necessary to make this determination, which was the very reason for conducting the purported test in the first place. *See* Ruff Testimony, August 28, 2000 Tr. at 86; Peterson Testimony, August 28, 2000 Tr. at 202-207.

288. Contrary to her testimony, it was the pattern and practice of Peterson's and [the **Clinton-Gore**] White House Counsel[']s Office not to supplement past document productions with subsequently-discovered responsive documents, but rather to conceal any subsequently-discovered responsive documents. *See* H. Ex. 111.

289. Peterson testified falsely on the document productions of the Clinton-Gore White House Counsel's Office. *See* Peterson Testimony, August 28, 2000 Tr. at 264-265, H. Ex. 111.

290. Given Peterson's false testimony to this Court about the practice of Clinton-Gore White House with respect to document production, her testimony about any test of e-mail is presumably false.

291. Based upon the foregoing findings of fact and the reasonable inferences to be drawn therefrom, the purported test never took place. Any examination of Mail2 e-mail was only to check if and how the substance of the e-mails would put the Clinton Administration in legal jeopardy. (Hence, the mysterious "search" list with the high official names of Sidney Blumenthal, Erskine Bowles, Ira Magaziner, and John Podesta. *See* Haas Testimony, August 14, 2000 Tr. at 23-27.) Once it became clear that Mail2 e-mail were responsive to document

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requests from Lewinsky and other investigators, the Clinton-Gore White House, through the use of threats to keep contractors in line, kept investigators in the dark about Mail2 and simply shut down any real attempt to fix the Mail2 problem.

292. No good faith test was []ever actually performed, and none of the government witnesses [is] able to remember any specific details concerning who ordered the test, or its scope, among other implausible lapses of memory. *See* Ruff Testimony, August 28, 2000 Tr. at 62, 65, 82-86 (Ruff claims not to remember if a subpoena was reviewed in the course of the test.); Lindsay Testimony, August 23, 2000 Tr. at 142-145 (Lindsay claims Ruff admitted ordering the test). *Compare [I]d. with* Ruff Testimony, August 28, 2000 Tr. at 63, Mills Testimony, September 1, 2000 Tr. at 70[] (Contradictory testimony as to whether Ruff ordered Lindsay to do the test). Much of the Clinton-Gore White House witnesses' testimony is contradictory. *Compare* Lindsay Testimony, August 23, 2000 Tr. at 143 *with* Haas Testimony, August 2, 2000 Tr. at 200, Haas Testimony, August 14, 2000 Tr. at 23-27 (Contradictory testimony as to whose computers were ordered to be tested.). *See* Mills Testimony, September 1, 2000 Tr. at 72 (Mills claims not to remember how the newly-discovered e-mail documents came into the White House Counsel's Office.). *See* H. Ex. 111 (It was Peterson's and the Clinton-Gore White House Counsel's Office pattern and practice not to supplement document productions with newly-discovered responsive documents.).

293. The Clinton-Gore White House Counsel's Office obstruction on e-mail was part of a deliberate "stall strategy" admitted by Peterson to Sheryl Hall to keep information from Plaintiffs until at least after Bill and Hillary Clinton left the White House. Second Declaration of Sheryl L. Hall, December 7, 1999[, H. Ex. 2] at ¶ 7; Hall Testimony, July 13, 2000 Tr. at 95.

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[Supp.][O]. **The Clinton-Gore Justice Department's Characterization of Hall's Declarations Is Misleading.**

293a Were it not for the information imparted to this Court by Sheryl Hall in her third declaration, this Court would never have of the existence of what is now referred to as "Mail2" and, the Court finds, were it not for the information related to the Court by Hall in that declaration, it is unlikely that the Clinton-Gore White House would have begun those steps necessary to restore un-archived e-mail from back-up tapes and place them in ARMS.

293b This Court has presided over two proceedings relating to "Mail2" at which Hall has testified and been subjected to cross examination by the Clinton-Gore [White] House. The Court had the opportunity to observe her demeanor and judge her credibility as a witness.

293c Having listened to several days of testimony by numerous witnesses and accepted into evidence several hundred pages of documentary evidence relating to Mail2, the Court finds that the information relating to Mail2 that Hall imparted in her third declaration is accurate.

293d The Court finds the thinly veiled attack upon Hall's credibility by the Clinton-Gore White House found at pg. 53, n. 39 to be unpersuasive. The Court, having considered Hall's testimony on direct examination relating to a meeting at which Peterson told Hall that the strategy of the Clinton-Gore White House was to stall this litigation beyond the end of the Clinton-Gore administration, and having observed Hall being cross-examined by the Clinton-Gore White House upon her failure to account in her second and fifth [D]eclarations for all individuals present at that meeting, finds such failure irrelevant to the issue of whether Peterson's a statement was made. *See* Hall Testimony, July 31, 2000 Tr. at 83-87.

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O. The Fact That Lower Level Clinton-Gore White House Employees and Contractors Knew of Mail2's Continuing Impact on Document Production, Shows Top Officials and Lawyers Knew As Well.

294. IS&T's own employees and contractors, who were untrained in the law, recognized the continuing impact of Mail2 on document production to courts, Congress, and the Independent Counsel. *See* Haas Testimony, August 14, 2000 Tr. at 34.

295. The effect of the failure to manage e-mail on ARMS on document production[s] was a major concern of Haas and the Northrop Grumman contractors with whom he worked in IS&T. *See* Haas Testimony, August 14, 2000 Tr. at 34-35.

296. Haas knew that it was important to get non-records[-]managed e-mail into ARMS so it could [be] produce[d] to [the] courts, Congress, and the Independent Counsel. *See* Haas Testimony, August 14, 2000 Tr. at 35.

297. Haas knew that there were legal consequences for not producing documents in response to a subpoena. *See* Haas Testimony, August 14, 2000 Tr. at 75.

298. After they had told Northrop Grumman officials of the threats, the Northrup Grumman employees expected that there would be movement to correct the problem and produce the documents. *See* Haas Testimony, August 14, 2000 Tr. at 75.

299. After Northrop Grumman management contacted the Clinton-Gore White House about Mail2, Haas and the other Northrup Grumman employees thought that the project would go forward so that the documents could be produced. *See* Haas Testimony, August 14, 2000 Tr. at 75.

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300. Spriggs[,] of Northrop Grumman[,] produced a plan called a Statement of Work ("SOW") to analyze the solution to the problem of the missing e-mail, but the plan went into a "black hole." *See* Haas Testimony, August 14, 2000 Tr. at 75-76.

301. After Spriggs produced the plan, there were no instructions from Clinton-Gore White House officials to do anything more on the project to restore the missing e-mail. *See* Haas Testimony, August 14, 2000 Tr. at 76-77.

302. Northrop Grumman never received an okay to proceed on the project outlined in the SOW. *See* Haas Testimony, August 14, 2000 Tr. at 85.

303. Northrup Grumman had the capability and sophistication to solve the Mail2 problem. *See* Haas Testimony, August 14, 2000 Tr. at 84.

304. Northrop Grumman and Clinton-Gore White House knew that the Mail2 reconstruction project had risks "due to the high visibility to the public, political, and legal attention or requirements associated with the unrecorded documents." *See* Haas Testimony, August 14, 2000 Tr. at 87; H. Ex. 24 at NGL00418.

305. Northrop Grumman was awaiting the Clinton-Gore White House's approval of the SOW to begin work to correct the e-mail problem. August 14, 2000 Tr. at 89.

306. Resources were never allocated by the Clinton-Gore White House to cure the Mail2 problem. *See* Haas Testimony, August 14, 2000 Tr. at 137-138.

307. Northrop Grumman took the position that fixing Mail2 was not within the scope of the base services contract. *See* Haas Testimony August 15, 2000 Tr. at 40-41; H. Ex. 9-63.

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308. The proposal prepared by Spriggs to study the Mail2 problem remained in limbo after Spriggs submitted it to the Clinton-Gore White House. *See* Haas Testimony, August 15, 2000 Tr. at 42.

309. Northrop Grumman was told by the Clinton-Gore White House only to work on a proposal to study the problem, and not to work on the problem itself. Haas Testimony, August 15, 2000 Tr. at 42-43.

310. When Mail2 was discovered, it was understood and discussed by everybody involved that relevant documents were in jeopardy of not being produced in compliance with subpoenas. *See* Haas Testimony, August 15, 2000 Tr. at 57-58.

311. The four Northrop Grumman employees who were at the working level of the Mail2 problem – Haas, Spriggs, Salim and Golas – were not given resources and could not talk to anyone about getting resources to address the Mail2 problem, which made it impossible to correct the problem. *See* Golas Testimony, August 15, 2000 Tr. at 73.

312. Northrop Grumman's removal of Lambuth from the project was another obstacle toward solving Mail2. *See* Golas Testimony, August 15, 2000 Tr. at 73.

313. After Crabtree and Lambuth left OA, and Gallant was planning to [] leave OA, the four Northrop Grumman employees went to Paulette Cichone (then OA Deputy Director) in an effort to get management direction to address the Mail2 problem. *See* Golas Testimony, August 15, 2000 Tr. at 95-96.

314. Golas was also concerned that the Mail2 problem was not being resolved. *See* Golas Testimony, August 2, 2000 Tr. at 118-19.

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315. [Tony] Barry began sending a series of e-mails to his superiors and colleagues in the Clinton-Gore White House expressing concern about the impact of Mail2 on document searches. In an e-mail dated August 13, 1998, Barry told his superior that "the records must be recreated and any searches need to be reperformed if the requesters feel it is necessary... This seems like a daunting proposition but I do not see any other alternative." *See* H. Ex. 9-23.

316. The evidence adduced to date shows that Barry's e-mails expressing concerning about the Mail2 problem resulted from the legal risks he faced at having being put forward by the Clinton-Gore White House and its counsel to give false testimony to this Court.

317. Barry clearly understood that the Mail2 problem required him to re-perform searches of the ARMS system he made in response to document requests. *See* Barry Testimony, August 3, 2000 Tr. at 80.

318. Barry e-mailed his manager again on September 1, 1998 requesting a meeting to "discuss the plan/approach for proceeding" on the Mail2 problem. *See* H. Ex. 9-25.

319. Barry e-mailed his manager and Kathleen Gallant on September 10, 1998, telling them "I am growing increasingly concerned [sic] about the seeming lack of movement on the Mail2 problem. Do you know where the hold up is. We have known about this problem for 4 months now and not a single record has been passed to ARMS...even worse, the root problem has not been fixed." *See* H. Ex. 9-26.

320. On October 20, 1998, Northrop Grumman submitted a proposal or [Statement] of Work ("SOW") to OA for solving the Mail2 problem. The SOW was not only for an initial analysis of the Mail2 problem, but also included actual reconstruction of the e-mail. *See* H. Ex. 25-416 to 25-465.

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321. Shortly thereafter, on October 27, 1998, Plaintiffs served their Second Set of Requests for the Production of Documents on the Clinton-Gore White House. Request numbers 28-30 seek documents related to Clinton-Gore White House e-mail.

322. Thus for two years – since October of 1998 – Defendants have had in their possession a proposal indicating that for $602,492.00, the missing e-mail could be reconstructed and archived in word-searchable format.

323. The Clinton-Gore White House never acted on Northrop Grumman's proposal, and the work needed to address the Mail2 problem was never undertaken.

324. On November 13, 1998, Barry e-mailed his manager, James Wright, noting that Northrop Grumman needed a "response on the MAIL2 IWO." *See* H. Ex. 9-31. An IWO is an Initial Work Order. *See* Barry Testimony, August 18, 2000 Tr. at 13. By agreeing to the proposal from Northrop Grumman in response to the IWO, the White House would have been authorizing Northrop Grumman to undertake a comprehensive assessment of the Mail2 problem. *See* Barry Testimony, August 18, 2000 Tr. at 12-13.

325. Barry received a copy of the Northrop Grumman response to the IWO for Northrop Grumman to evaluate the Mail2 problem. *See* Barry Testimony, August 18, 2000 Tr. at 10-12.

326. By e-mail dated November 12, 1998 to Joseph A. Vasta, Devere Patton, Robert Helms, John Spriggs, James Wright, and Lynnae Roscoe on the subject of a "Mail2 meeting," Barry stated that it is clear that the Clinton-Gore White House cannot proceed as described in the IWO. *See* Barry Testimony, August 18, 2000 Tr. at 12-13; H. Ex. 43.

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327. Because no one else in Clinton-Gore White House was addressing the problem, Barry took it upon himself to read the IWO. *See* Barry Testimony, August 18, 2000 Tr. at 13.

328. Barry tried to call a meeting with Spriggs and Vasta to discuss the Barry's concerns about the IWO and the need to find solutions to the Mail2 problem. *See* Barry Testimony, August 18, 2000 Tr. at 13; H. Ex. 43.

329. In this e-mail Barry told his supervisor James Wright and the Northrop Grumman employees most involved in the Mail2 matter that they needed to sit down and discuss it. *See* August 18, 2000 Tr. at 18; H. Ex. 43.

330. Barry's e-mail of November 12, 1998 was prompted by week after week of meetings at which Mail2 was an action item, but there was no action and no one from the Clinton-Gore White House was getting back to Northrop Grumman. *See* H. Ex. 43; Barry Testimony, August 18, 2000 Tr. at 18.

331. From July of 1998 to February of 1999, Barry sent a continuous stream of e-mail and memoranda to his supervisors at the EOP, including e-mail expressing his concern that the Mail2 problem was not being addressed and its effect on document production. *See* Barry Testimony, August 21, 2000 Tr. at 141-143; H. Ex. 39-1002, 9-40, 9-19, 9-22, 9-23, 9-24, 9-25, 9-52, 9-25 (E2016 and 2017), 9-26, 9-109, 9-110, 9-27, 9-30, 9-76, 9-31, 9-29, 9-76, 9-103, and 9-67.

332. Employees of Clinton-Gore White House and Northrop-Grumman expressed concerns that the Mail2 problem was not being addressed. *See, e.g.,* H. Exs. 9-22, 9-23, 9-25, 9-26, 9-27, 9-30, 9-31, 9-40, and 9-52.

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333. The hierarchy of the OA represented to its technical staff that it was investigating whether the Mail2 problem could be addressed with *Armstrong* funds. *See, e.g.*, H. Ex. 9-95, 9-123.

334. Once she understood the extent of the Mail2 problem in June, 1998, Kathy Gallant realized that additional funds would be needed to fix it. *See* Gallant Testimony, August 1, 2000 Tr. at 140-141.

335. Gallant knew there were funds available in the *Armstrong* account and that these funds could be requested and used to correct the Mail2 problems. *See* Gallant Testimony, August 1, 2000 Tr. at 140.

336. Gallant had to go through Mark Lindsay to get authorization to use the *Armstrong* funds. *See* Gallant Testimony, August 1, 2000 Tr. at 140.

337. Before Gallant had learned about Mail2, she had made a request to Lindsay to use *Armstrong* funds to purchase additional equipment to be used by Tony Barry "to support the ARMS system." *See* Gallant Testimony, August 1, 2000 Tr. at 139-140.

338. Lindsay indicated it would not be a problem to get the *Armstrong* funds to purchase the equipment to "augment the ARMS system." *See* Gallant Testimony, August 1, 2000 Tr. at 140.

339. When she learned about Mail2, Gallant asked Lindsay to obtain authorization to use *Armstrong* funds to fix Mail2 as well. *See* Gallant Testimony, August 1, 2000 Tr. at 140-141.

340. There was approximately $1.5 million in *Armstrong* funds available if the authorization could be obtained. *See* Gallant Testimony, August 1, 2000 Tr. at 140.

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341. Lindsay indicated that it would not be a problem to get those funds to fix Mail2. *See* Gallant Testimony, August 1, 2000 Tr. at 140-141.

342. Gallant made repeated requests for funds to correct the Mail2 problem. *See* Gallant Testimony, August 1, 2000 Tr. at 141.

343. Gallant was told almost on a weekly basis that Lindsay was working on getting the funds. *See* Gallant Testimony, August 1, 2000 Tr. at 141.

344. The funds were never approved or received by Gallant or her department to fix the Mail2 problem. *See* Gallant Testimony, August 1, 2000 Tr. at 139-142, 209-210.

345. Other persons in addition to Lindsay were well aware of her repeated requests for the *Armstrong* funds to correct the Mail2 problem, including Ada Posey and Paulette Cichon, as well as individuals in the financial management department. *See* Gallant Testimony, August 1, 2000 Tr. at 140. at 209-210.

P. Plaintiffs Repeatedly Put [the] Clinton-Gore White House and [the Clinton-Gore] Department of Justice on Notice Concerning Mail2.

346. Plaintiffs' counsel put Defendants' counsel on notice about the Mail2 problem on multiple occasions.

347. In December 1998, *Insight* Magazine published an article entitled "Looking for Information in all the [Wrong] Places," which disclosed the existence of Project X, and reported that a problem with a server in a White House computer system might have resulted in the nonproduction of e-mails responsive to subpoenas by Congressional panels and the Independent Counsel. *See* H. Ex. 20.

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348. On December 8, 1998, Plaintiffs' counsel sent a letter and a copy of the *Insight* [a]rticle to James Gilligan, counsel for Defendants. The letter stated in pertinent part:

> The attached articles from . . . *Insight* [M]agazine reference documents that are covered by our first and second document requests, and deposition questions. Please take steps to assure that **no** documents responsive to these requests, referenced directly or indirectly in the attached articles, are destroyed.
>
> Additionally, these articles raise serious questions about the truthfulness and veracity of testimony elicited and presented in the 30(b)(6) depositions.

See H. Ex. 20 (emphasis in original).

[Supp.][P]. **The Clinton-Gore Justice Department Submitted a Misleading Finding That "[There Were] Many Reasons That EOP's Counsel Had to Dismiss the *Insight* Article as a Subject of Serious Inquiry" Because the Article "Hardly Constitutes a Lucid Description of the Mail2 Problem" (Clinton-Gore Mem at 105, 104) as Demonstrated by the Following Findings.**

348a. In addition to the cover letter of Plaintiffs' counsel, which expressly informed Gilligan that the *Insight* article concerned false testimony and documents that were responsive in this case, the article itself clearly identified the operative facts behind Mail2. The letter also urged an investigation of these issues. The article expressly referred to "Project X" which is the exact phrase used to describe Mail2 within the Clinton-Gore White House. *See* H. Ex. 15 at 3.

348b. The Clinton-Gore Justice **[Department]** attorneys were therefore on notice about Mail2/Project X yet did nothing to inform this Court about the problem and instead submitted argument[,] testimony and pleadings subsequently. In fact, this most recent brief, the Clinton-Gore Mem**[orandum]**, continues to try to deceive this Court, is itself sanctionable, and is

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evidence of [the] cover-up. Barry Testimony, August 3, 2000 Tr. 170-172; Lindsay Testimony, August 23, 2000 Tr. at 113-115; EOP Post-Hearing Memorandum at 36-39, 104-107.

348c. In point of fact, the information about the telephone records in the article are true, *see* Hall Testimony, July 31, 2000 Tr. at 77-95,

349. The *Insight* [a]rticle was distributed to Barry as an attachment to the summary of the December 9, 1998 COTR meeting between Northrop Grumman and government employees. *See* H. Ex. 9-63 at NGL00252, NGL00258-NGL00259.

350. The December 9, 1998 COTR meeting summary stated:

> Northrop Grumman informed this meeting's attendees that it had alerted the Government about the article as soon as Northrop Grumman discovered it.

See H. Ex. 9-63 at NGL 00253.

351. Robert Haas read the *Insight* [a]rticle "as soon as it came out[;]" and discussed it with Sandra Golas and John Spriggs, who then reviewed it for themselves. *See* Haas Testimony, August 14, 2000 Tr. at 140-141.

352. Karl Heissner received the *Insight* [a]rticle from a colleague in or around December 1998. *See* Heissner Testimony, August 15, 2000 Tr. at 164-166.

353. At a December 15, 1998 Status Hearing, Plaintiffs' counsel notified this Court and Clinton-Gore White House counsel of the content and ramifications of the *Insight* [a]rticle. Lawyers for the Clinton-Gore White House, including Ms. Shapiro, Ms. Weismann, Mr. Gilligan, Ms. Giles, and Ms. Paxton, were present at this hearing. *See* December 15, 1998 Tr. at 2, 12-13.

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354. The Court provided Clinton-Gore White House counsel with the opportunity to rebut the allegations made in the *Insight* [a]rticle, and Clinton-Gore White House lawyer Elizabeth Shapiro represented that she did not have enough information to do so:

> THE COURT: One other issue, Ms. Shapiro, since [Mr. Klayman] raised this issue about the hundred thousand e[-]mails and handed up that article, do you want to say anything more about that? I will give you the opportunity since he sprung that.
>
> MS. SHAPIRO: I don't have enough information right now to be able to give you a full explanation.
>
> THE COURT: I just don't want you to say that I didn't give you the chance.

See December 15, 1998 Tr. at 34.

355. Michelle Peterson saw the *Insight* [a]rticle during a hearing before this Court in December 1998, and understood that the article questioned the completeness of document productions. *See* E-mail Hearing Testimony of Michelle Peterson (hereinafter "Peterson Testimony") August 28, 2000 Tr. at 176-178. She stated during examination by Plaintiffs' counsel:

> I understood when you . . . were asking the question in court [in December 1998] and raising the [December 8, 1998] letter that you were questioning whether the document production had been complete.

See Peterson Testimony, August 28, 2000 Transcript at 177-178.

356. After seeing the *Insight* [a]rticle, Ms. Peterson discussed it with Clinton-Gore Justice Department lawyers, either Mr. Gilligan, Elizabeth Shapiro, or Allison Giles. During these discussions, Clinton-Gore Justice Department lawyers questioned Ms. Peterson regarding

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allegations made in the *Insight* [a]rticle about the e-mail problem. *See* Peterson Testimony, August 28, 2000 Transcript at 180-183.

357. Northrop Grumman also discussed the *Insight* article with the Clinton-Gore White House around the time it was published in December, 1998. On December 11, 1998, Joseph A. Vasta, Project Manager for Northrop Grumman, prepared a Memorandum to DeVere Patton, the Clinton-Gore White House's COTR on the Northrop Grumman contract concerning the "Weekly COTR Meeting December 9, 1998." H. Ex. 9-63 at 1.

358. The COTR is the Contracting Officer's Technical Representative, and the weekly COTR meeting is a meeting between the COTR and the contractor "to go over issues related to the contract from a technical perspective." *See* Barry Testimony, August 3, 2000 Tr. at 168.

359. Enclosed with the December 11, 1998 meeting notes from Vasta was a copy of the December 8, 1998 *Insight* [a]rticle "Looking for Information in All the Wrong Place[s]." *See* H. Ex. 9-63 at 1.

360. Northrop Grumman "read a portion of and then provided to the Government a hardcopy of" the *Insight* [a]rticle at the December 9, 1998 meeting. *See* H. Ex. 9-63 at 2.

361. Northrop Grumman "alerted the Government about the article as soon as Northrop Grumman discovered it." *See* H. Ex. 9-63 at 2.

362. At the December 9, 1998 meeting, "Northrop Grumman emphasized it would proceed with [the Mail2 E-mail Reconstruction project] as it would with any other technical problem [and] re-emphasized that no actions on [Northrop Grumman's] part has been or will be clandestine in any way." *See* H. Ex. 9-63 at 2.

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363. The December 9, 1998 COTR meeting was attended by Clinton-Gore White House employees Dale Helms, DeVere Patton, Tracy Breeding, and David Peterson. *See* H. Ex. 9-63 at 1.

364. The COTR meeting notes with the attached *Insight* article were also sent to the following Clinton-Gore White House employees: Tony Barry, Dale Helms, Lynnae Roscoe, Tracy Breeding and David Peterson. H. Ex. 9-63 at 1.

365. Mark Lindsay became aware of, and read, the *Insight* article prior to his March 1999 testimony before the House Committee on Government Reform. *See* Lindsay Testimony, August 23, 2000 Tr. at 102, 116.

366. At an April 8, 1999 Rule 108(m) conference which covered e-mail issues, Plaintiffs' counsel reinforced to Mr. Gilligan the gravity of the e-mail problem, and specified that it therefore affected previous Clinton-Gore White House's document production and testimony. In response, Mr. Gilligan did not confirm or deny the *Insight* article. *See* Declaration of Thomas Fitton, attached hereto as H. Ex. 142.

367. In the case of *Barr v. EOP*, Case No. 1:99cv09165 (JLG), Plaintiffs' counsel filed for another client, Representative Bob Barr, a First Set of Requests for Production of Documents to Defendant EOP on October 18, 1999, which made a specific reference to non-records-managed e-mail. *See* Plaintiff's First Set of Requests for Production of Documents to Defendant Executive Office of the President, attached hereto as H. Ex.143 at 4 ("including both records managed e-mail and . . . non records managed e-mail, which said non records managed e-mail is sometimes known or referred to as 'mail 2'")).

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368. Barry and Michelle Peterson performed the search for responsive documents pursuant to this request. *See* Peterson Testimony, August 28, 2000 Tr. at 239-241.

369. In objections to a specific request to search unrecorded e-mail and a reference to Mail2, the Clinton-Gore White House and the [Clinton-Gore] Department of Justice made no mention of this e-mail issue, filing another materially false pleading before this Court. *See* Response of Defendant EOP to Plaintiffs First Set of Requests for Production of Documents filed on December 21, 199 in [***Barr v. EOP***,] Case No. 1:99cv09165 (JLG).

Q. Northrop Grumman Officials and Their Counsel Were Notified of the Threats, Obstruction of Justice, And Worked With The Clinton-Gore White House To Coverup <u>These Ongoing Crimes</u>.

370. In August 1998, Robert Haas and his colleagues sought a meeting with their Northrop Grumman managers to discuss Project X because individuals like Betty Lambuth who were directly involved with Project X were leaving the agency. They wanted to talk to counsel at Northrop Grumman "to see if [they] were protected from this happening to [them]." *See* Haas Testimony, August 14, 2000 Tr. at 54.

371. At that time, Steve Hawkins was Northrop Grumman's Program Manager for the EOP contract, but was preparing to leave the Clinton-Gore White House. Joseph Vasta became Hawkins' executive officer [in order] to learn Hawkins' position in preparation for taking over upon Hawkins' leaving the Clinton-Gore White House. *See* E-mail Hearing Testimony of Joseph Vasta (hereinafter "Vasta Testimony"), November 3, 2000 (morning session) Tr. at 29.

372. On August 28, 1998, Haas, John Spriggs and Sandra Golas (the "Project X team") met with Vasta and attempted to discuss Project X without telling Vasta what Project X was since they had been threatened by Mark Lindsay and Laura Crabtree with retaliation if they

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disclosed the details of Project X to anyone, including their managers. *See* Vasta Testimony, November 3, 2000 Tr. (morning session) at 29 - 34.

373. At that meeting, Haas, Spriggs and Golas told Vasta that they were not allowed to make notes about Project X, that they were not allowed to discuss Project X with anyone else, and that any meetings they had about Project X had to be out of the earshot of anyone else. *See* Vasta Testimony, November 3, 2000 Tr. (morning session) at 29-30; H. Ex. 120 at 2 ("Summary of Project X Discussions").

374. Following the meeting, Spriggs reminded Vasta that they were not to make notes about Project X and asked Vasta for the notes that he had made during the meeting. Vasta turned these notes over to Spriggs and has not seen them since. *See* Vasta Testimony, November 3, 2000 (afternoon session) Tr. at 6-9; H. Ex. 122 at 31.

375. On September 2, 1998, the Project X team had a follow up meeting with Steve Hawkins and Vasta, and informed them that they wanted to speak with a Northrop Grumman attorney. *See* H. Ex. 120 at 2 ("Summary of Project X Discussions").

376. The next day, while Hawkins and Vasta were meeting in Hawkins' office, Haas came in and informed them that he had been threatened by Clinton-Gore White House employees with jail if he did not keep Project X secret. *See* Vasta Testimony, November 3, 2000 (morning session) Tr. at 29-30; E-mail Hearing Ex. 120 at 2 ("Summary of Project X Discussions").

377. Significantly, though two years have elapsed, Lucente remembered the threat with the same wording as that testified to by Haas. *Compare* Vasta Testimony, November 3, 2000 (first) Tr. at 33 ("[Haas] used the term – he was told there was a jail cell with his name on it.")

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with Haas Testimony, August 14, 2000 Tr. at 36 ("The words were obvious. We have a jail cell with your name on if you tell anybody.").

378. Vasta's impression from these meetings was that the Project X team had been put in a no-win situation by Lindsay and Crabtree who had directed them to work on Project X while simultaneously threatening to fire them if they discussed the project with anyone including their managers. *See* Vasta Testimony, November 3, 2000 (afternoon session) Tr. at 2-6; H. Ex. 122 at 30.

379. At this time, Jim DeWire was employed by Northrop Grumman as the Operations Unit Program Director and was the immediate supervisor of Hawkins and Vasta. *See* E-mail Hearing Testimony of Joseph Lucente (hereinafter "Lucente Testimony"), November 1, 2000 Tr. at 60, 82-83.

380. Hawkins and Vasta reported their conversations with Haas and his team to Jim DeWire, who requested that Vasta prepare a brief summary of the events surrounding the meetings. *See* Vasta Testimony, November 3, 2000 (afternoon session) Tr. at 22-23.

381. In response to this request, Vasta prepared a document titled "Summary of Project X Discussions" which he faxed to Jim DeWire's administrative assistant on September 9, 1998. The fax cover sheet indicated that the fax was "urgent." *See* Vasta Testimony, November 3, 2000 (afternoon session) Tr. at 5, 22; H. Ex. 120. Vasta confirmed the accuracy of this summary during his testimony on November 3, 2000. *See* Vasta Testimony, November 3, 2000 (afternoon session) Tr. at 23.

382. What troubled Vasta about Project X was that good people were threatened by the Clinton-Gore White House. *See* Vasta Testimony, November 3, 2000 (morning session) Tr. at

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28. He believed that the employees were under duress and needed somebody to intervene and rectify the situation. *See* Vasta Testimony, November 3, 2000 (afternoon session) Tr. at 11.

383. Vasta's Summary of Project X Discussions notes that the team had been instructed not to discuss Project X with anyone because a Clinton-Gore White House employee (Barry) was preparing to testify on Capitol Hill about a search for e-mail related to Monica Lewinsky. H. Ex. 120 at 2-3. Haas had also told Vasta that e-mails from, to or about Monica Lewinsky were not being archived and had not been delivered in response to requests for documentation and that this information was not included in Barry's testimony on Capitol Hill. *See* Vasta Testimony, November 3, 2000 (afternoon session) Tr. at 24-25.

384. Plaintiffs have found no record of Barry testifying on Capitol Hill in 1998. Barry did testify **[in a deposition taken by the]** Plaintiffs in **[this case]** on June 11, 1998. The above facts show that the Clinton-Gore White House intended to prevent accurate and complete testimony from being made to this Court and that they used threats to try effect this obstruction. Having discovered Mail2 in January, 1998, Barry already knew about Mail2 and related issues, yet Barry's supervisors at the Clinton-Gore White House (Lindsay *et al.*) did not know the full extent of his knowledge and thus sought to try to keep additional Mail2 information from him so he could not testify to this Court.

385. After Vasta faxed the Summary on September 9, 1998, either DeWire or Joseph Cunningham (the Northrop Grumman Unit Director) called Joseph Lucente and requested that a meeting be set up on an emergency basis that day with Northrop Grumman corporate counsel. *See* Lucente Testimony, November 1, 2000 Tr. at 81-85.

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386. The meeting was arranged for the same day and was attended by Lucente, Cunningham, Haas, Spriggs, Golas and Ralph K. Pope, Esquire. *See* Lucente Testimony, November 1, 2000 Tr. at 81.

387. Pope was Northrop Grumman's Sector General Counsel. *See* Lucente Testimony, November 1, 2000 Tr. at 104.

388. Northrup Grumman has asserted the attorney client privilege to keep the contents of this meeting and the follow up activity by Northrop Grumman and its attorneys secret. *See, e.g.*, Lucente Testimony, November 1, 2000 Tr. at 84-85; E-mail Hearing Testimony of Earl J. Silbert (hereinafter "Silbert Testimony"), October 3, 2000 Tr. at 55-57.

389. Nevertheless, testimony has confirmed that the Northrop Grumman employees were threatened and that these threats were discussed at this meeting. *See* Lucente Testimony, November 1, 2000 Transcript at 84 ("Q. Did they tell you that these employees told them that they had been threatened by White House officials? A. Only at the meeting."); Haas Testimony, August 14, 2000 Tr. at 60 ("Q. Mr. Haas, during this meeting at headquarters in [Herndon] of Northrop Grumman ... you did relay the threats that had occurred? A: Yes.").

390. Following the meeting, Northrop Grumman hired Earl J. Silbert, Esquire to contact the Clinton-Gore White House regarding Project X. [*See*] E-mail Hearing Testimony of H. Lowell Brown, Esquire (hereinafter "Brown Testimony"), December 22, 2000 Tr. at 37. H. Lowell Brown, Esquire was the Assistant General Counsel of Northrop Grumman and reported directly to the corporation[']s General Counsel. [*See*] Brown Testimony, December 22, 2000 Tr. at 5 - 7. He was Silbert's law clerk in 1975 and in 1977 became an assistant United States Attorney serving under Silbert. [*See*] Brown Testimony, December 22, 2000 Tr. at 37 - 38.

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Brown also served with Ruff when he was the United States Attorney and had communicated with him since he left office. [*See*] Brown Testimony, December 22, 2000 Tr. at 39.

391. Silbert was United States Attorney from 1974 to 1979. *See* Silbert Testimony, October 3, 2000 Tr. at 22 - 23. Ruff also served as United States Attorney but after Silbert had left the position. Silbert considers himself a friend of Ruff. *See* Silbert Testimony, October 3, 2000 Tr. at 35 - 36.

392. The majority of Silbert's practice is devoted to handling criminal defense and professional ethics matters. *See* Silbert Testimony, October 3, 2000 Tr. at 22 - 24, 80. He is not a government contracts lawyer. *Id.*

393. Silbert represents James Riady and Erskine Bowles. *See* Silbert Testimony, October 3, 2000 Tr. at 31; Breuer Testimony, October 19, 2000 Tr. at 67 - 68.

394. Normally, Northrop Grumman called on Neal O'Donnel, Esquire for contractual matters. [*See*] Lucente Testimony, November 1, 2000 Tr. at 57.

395. Based on the above facts, an evidentiary inference arises that Silbert was hired by Northrop Grumman for his criminal defense expertise, because Northrop Grumman knew they were at risk for being involved in an ongoing criminal obstruction of justice with [the] Clinton-Gore White House. In addition to valuing his criminal defense expertise, Northrop Grumman also hired Silbert because of his friendly contacts with Ruff and the Clinton-Gore White House Counsel's Office.

396. Immediately following the September 9, 1998 meeting, Joseph Lucente drafted a letter to be sent to Dale Helms, the White House contracting officer concerning the issues raised at the meeting. *See* Lucente Testimony, November 1, 2000 Tr. at 11, 13.

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397. Lucente exchanged drafts of the letter with Ralph Pope by e-mail. The letter went through approximately five drafts before being finalized. *See* Lucente Testimony, November 1, 2000 Tr. 13, 15.

398. Lucente, Pope and Burks Terry, Esquire, Deputy General Counsel for Northrop Grumman, decided not to mention the threats in the final version of the Lucente letter. *See* Lucente Testimony, November 1, 2000 Tr. at 100 - 102. ("Q. So it was your decision not to put the threats in here? Calls for a yes or no. A. It was a cooperative decision. Q. And the decision was not to put the threats in here? A. Yes. Q. and who specifically made the cooperative decision with you? A. Are you asking who assisted in the construction of this letter? ... THE WITNESS: Yes, it was Mr. Pope. ... THE COURT: Who Else? ... THE WITNESS: Burks Terry").

399. After Lucente received the subpoena in this case on October 30, 2000, he asked Ralph Pope if he had any of the drafts of the September 14, 1998 letter to Helms and Pope told him that he did not have any drafts. *See* H. Ex.112; Lucente Testimony, November 1, 2000 Tr. at 21 - 22.

400. In fact, copies of the draft of the letter did exist and were in the custody and control of Northrop Grumman and its counsel at the time Pope made this statement to Lucente. *See* H. Ex. 110 at 4, Privilege Log Entries 6 - 9.

401. Lucente acknowledged that the threatening of Northrop Grumman employees was a serious event, but was evasive in answering how Northrop Grumman intended to raise the issue with the [Clinton-Gore] White House. At first, Lucente stated that Northrop Grumman intended to deal with the issue of the threats by virtue of his letter to Mr. Helms, but then, under persistent

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questioning, he was forced to concede that the issue was not even mentioned in the letter, since the threats were omitted from the letter. [*See*] Lucente Testimony, *Id.* at 97 - 103.

402. It thus is evident that[] Northrop Grumman intended to handle the issue of Clinton-Gore White House threats through other means – Earl Silbert's contacts with Ruff and the Clinton-Gore White House Counsel's Office.

403. Drafts of the Lucente to Helms letter were forwarded to Silbert by Pope for Silbert's input before the letter was mailed on September 14, 1998. [*See*] E-mail Hearing Ex. 110 at 4, Privilege Log Entries 5 - 8.

404. Silbert also interviewed Haas on September 11, 1998 who recounted how he and his fellow Northrop Grumman employees had been threatened if the did not keep the Mail2 problem secret. *See* H. Ex.110 at 4, Privilege Log Entry 11; Silbert Testimony, October 3, 2000 Tr. at 54; Haas Testimony, August 14, 2000 Tr. at 56-57.

405. After the original of the Lucente to Helms letter was mailed, a copy was also sent to the Clinton-Gore White House Counsel's Office by Silbert with a note indicating that Northrop Grumman was available to answer any questions they had. *See* Brown Testimony, December 22, 2000 Tr. at 23-24.

406. Brown then directed Silbert to contact the [Clinton-Gore] White House Counsel's Office to confirm that they had received the copy of the letter. *See* H. Ex. 110 at 5; Privilege Log Entry 16; Brown Testimony, December 22, 2000 Tr. at 57-58.

407. Brown recalls calling Silbert to confirm that Silbert had called the White House Counsel's Office, but cannot recall anything about the conversation, including what he asked

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Silbert or what Silbert said the White House Counsel's Office told him. *See* Brown Testimony, December 22, 2000 Tr. at 57 - 58.

408. The weight of the evidence shows that Brown's testimony on his failure to recall what he discussed with Silbert about Silbert's contact with the Clinton-Gore White House Counsel's Office is false. *See* Brown Testimony, December 22, 2000 Tr. at 57 - 58.

409. Silbert has testified that he does not remember the telephone call to the Clinton-Gore White House Counsel's Office on September 28, 1998, does not remember [to] who[m] he spoke [] in the Clinton-Gore White House Counsel's Office, and does not recall the substance of the conversation or even why there was a conversation. *See* Silbert Testimony, October 3, 2000 Tr. at 57-58.

410. The weight of the evidence shows Silbert's memory loss about his contacts with the Clinton-Gore White House is also feigned. *Id.*

411. Northrop Grumman and Silbert are clear that the specific purpose for which Silbert was hired was to contact the Clinton-Gore White House concerning Mail2. *See* Silbert Testimony, October 3, 2000 Tr. at 37, 40 - 41, 53; Brown Testimony, December 22, 2000 at 37-38, 72-74, Pope Testimony, December 22, 2000 Tr. at 141.

412. Yet Silbert, Brown, Pope and Breuer have all suffered a complete loss of memory as to anything Silbert communicated to the White House or anything the White House may have communicated to Silbert. *See* Silbert Testimony, October 3, 2000 Tr. at 37, 39, 58, 60, 79, 80, 83, 86 and 93, and December 20, 2000 Tr. at 27-30, 34-35, 44-45, 48-49, 71-72, 75; Brown Testimony, December 22, 2000 Tr. at 24 - 25, 33, 34, 49 - 51, 53, 54, 57 - 62; Pope Testimony,

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December 22, 2000 Tr. at 162 - 164, 166 - 171; Breuer Testimony, October 19, 2000 Tr. at 68 - 70.

413. On December 9, 1998, Vasta attended the weekly Contracting Officer's Technical Representative ("COTR") meeting at which Dale Helms, DeVere Patton and Tony Barry of the EOP were present. *See* 9-63 at 1; Vasta Testimony, November 3, 2000 (afternoon session) Tr. at 37; Barry Testimony, August 3, 2000 Tr. at 168. At this meeting, Vasta provided the attendees with a copy of the December 8, 1998 *Insight* article "Looking for Information in All the Wrong Places" which Vasta had received from Haas. *See* H. Ex. 9-63 at 1; Vasta Testimony, November 3, 2000 (afternoon session) Tr. at 37. A copy was also sent to Helms, Patton and Barry by Vasta with his December 11, 1998 Memorandum of minutes of the weekly COTR meeting. Northrup-Grumman "alerted the Government about the article as soon as Northrup-Grumman discovered it." E-mail Hearing Ex. 9-63 at 1.

414. A copy of the *Insight* article was also sent by Pope to Silbert. [*See*] E-mail Hearing Testimony of Ralph K. Pope, Esquire (hereinafter "Pope Testimony"), December 22, 2000 Tr. at 195.

415. Silbert called the White House Counsel's Office about this article. *See* E-mail Hearing Exhibit 110 at 5, Privilege Log Entry 17; Silbert Testimony, December 20, 2000 Tr. at 32-34.

416. Silbert's call was returned by Special Counsel to the President Lanny Breuer, Esquire. See H. Ex. 110 at 5, Privilege Log Entry 15; H. Ex.109.

417. The phone message slip from December 30, 1998 noting a call from Breuer to Silbert indicates that Silbert spoke with Breuer, but Silbert does not recall the conversation or

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whom he spoke with. *See* Silbert Testimony, December 20, 2000 Tr. at 32-33. Breuer does not recall ever speaking to Silbert about Mail2. *See* Breuer Testimony, October 19, 2000 Tr. at 59-69.

418. On a copy of the fax cover sheet that accompanied the *Insight* article from Brown, Silbert wrote the following note concerning a phone conversation with the [Clinton-Gore] White House Counsel's Office: "On 12-30-98, EJS; W-H Counsel; checked again - all taken care of. No Committee yet raising issues." *See* H. Ex. 110 at 5, Privilege Log Entry 13; Silbert Testimony, December 20, 2000 at 32-33.

419. While Silbert was careful to note that the "W," "H" and "C" were capitalized in "W-H Counsel" from his December 30, 1998 notes, he failed to note this regarding the "C" in "Committees" until pressed to tell the truth by Plaintiffs' counsel. [*See*] Silbert Testimony, December 20, 2000 Tr. at 33, 68-69.

420. Based on the totality of the evidence, the reference on Silbert's fax sheet, "On 12-30-98, EJS; W-H Counsel; checked again - all taken care of. No Committee yet raising issues," is to the fact that all is "taken care of" because the obstruction was then continuing and no Congressional Committees were "raising issues" with respect the hidden e-mail.

421. The contract between Northrop Grumman and the Clinton-Gore White House was worth over $50,000,000 in revenue to Northrop Grumman. *See* Lucente Testimony, November 1, 2000 Tr. at 38.

422. The contract was an "Award Fee" contract, meaning that the amount of some of the payments under the contract would depend on the Clinton-Gore White House's evaluation of Northrop Grumman's performance. *See* Lucente Testimony, November 1, 2000 Tr. at 39-40.

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The contract is structured so that Northrop Grumman's costs are covered under the base contract but it only earns a profit based on this discretionary award fee determination portion of the compensation. *See* Vasta Testimony, November 3, 2000 (afternoon session) Tr. at 128.

423. Prior to December 1998, Northrop Grumman's performance had been evaluated as very good to outstanding by the Clinton-Gore White House. *See* Vasta Testimony, November 3, 2000 (afternoon session) Tr. at 41-42

424. In January, 1999, immediately following publication of the *Insight* article, Vasta was told by persons in the Clinton-Gore White House that Mark Lindsay wanted to talk to Northrop Grumman management about problems under the contract. *See* Vasta Testimony, November 3, 2000 (afternoon session) Tr. at 43 - 45.

425. On April 2, 1999, Vasta finally received the Clinton-Gore White House's Award Fee Determination covering the period from February 1, 1998 to September 30, 1998. *See* H. Ex. 131.

426. The evaluation of Northrop Grumman's performance was lower than prior evaluations. Vasta Testimony, November 3, 2000 (afternoon session) Tr. at 118 - 121.

427. This evaluation was in conflict with prior evaluations of Northrop Grumman's performance covering the same period provided by Jim Wright and Patton DeVere (both COTRs for the Clinton-Gore White House at the time the evaluations were made) which rated Northrop Grumman's performance of very good to outstanding. Vasta Testimony, November 3, 2000 (afternoon session) Tr. at 41-42, 129.

428. Lindsay and the Clinton-Gore White House retaliated against Northrop Grumman through the award fee determination over the publicity surrounding the e-mail problems. Vasta

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Testimony, November 3, 2000 (afternoon session) Tr. at 40 - 45, 120, 124 - 125, 128 - 131. [("Q. ... so your conclusion was from all of what you just testified that Mark Lindsay was retaliating over Mail2? ... THE WITNESS: I guess to characterize it appropriately, it was my impression that there was a direct relationship between the [*Insight* and Drudge Report] articles and all of the problems that we seemed to be having. ... Q. So the answer is, yes? A. Yes." Vasta Testimony, November 3, 2000 (afternoon) Tr. at 44 - 45)].

429. People within the Clinton-Gore White House let Vasta know that this was a means of "bringing pressure to bear on Northrop Grumman to conform to the EOP's wishes" and that "... Northrop Grumman had to get in line and do the things that they were asking us to do." [*See*] Vasta Testimony, November 3, 2000 (afternoon session) Tr. at 41, 130 - 131.

430. When Vasta left the Clinton-Gore White House, he requested an evaluation of his performance by the President of his division, Greg Donnelly. When he asked Mr. Donnelly about things he may have done wrong, Mr. Donnelly did not cite any specific failures, but instead stated that Vasta was in the wrong place at the wrong time, meaning that he was removed from the[Clinton-Gore White House] for his refusal to tow the Clinton-Gore White House's line on Mail2. *See* Vasta Testimony, November 3, 2000 Tr. at 134 - 136.

431. The evidence detailed above shows that Northrop Grumman officials and lawyers were notified of the threats and resulting obstructing of justice in this case, but took no remedial action.

[Supp.][Q]. **The Clinton-Gore Justice Department Proposed Finding That "Had Any Credible Evidence of The Alleged Threats Been Brought to [Brown and Silbert's] Attention They Would Have Engaged In Thorough Internal Investigations To Determine Whether There Was Cause To Take Further Action" (Clinton-Gore Mem at 27) Is Not Credible.**

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431a. As set forth in detail in Findings 370-441, Brown and Silbert did know of the threats, consulted with the White House Counsel's Office about these threats, and are lying when they claim no memory of the threats prior to February[] 2000.

432. The evidence also shows that Silbert was aware of the threats to Northrop Grumman employees and discussed these threats with the Clinton-Gore White House. *See* Haas Testimony, August 14, 2000 Tr. at 60 (Haas told Mr. Pope and others about the threats at the September 9, 1998 meeting); Lucente Testimony November 1, 2000 Tr. at 100 - 02 (counsel, including Pope and Burks, participated in decision not to discuss the threats in the Lucente letter); Brown Testimony[,] December 22, 2000 Tr. at 21 - 22 (Brown participated in drafting the Lucente letter); E-mail Hearing Ex. 110 at 4, Privilege Log Entries 6 - 9 (Silbert received and edited drafts of the Lucente letter); Brown Testimony, December 22, 2000 Tr. at 5, 69 - 70 (the reason Brown directed Silbert to contact the **[Clinton-Gore]** White House Counsel's office was to discuss the Lucente letter with that office); E-mail Hearing Ex. 110 at 4, Privilege Log Entry 16 (Silbert contacted the **[Clinton-Gore]** White House Counsel's Office as Brown had directed on September 28, 1998); Brown Testimony, December 22, 2000 Tr. at 57 - 58 (Brown called Silbert to confirm that Silbert had called the **[Clinton-Gore]** White House Counsel's Office).

433. The evidence detailed above shows that Earl Silbert contacted Lanny Breuer and/or Charles Ruff in the **[Clinton-Gore]** White House Counsel's Office about the threats to Northrop Grumman contractors. The Clinton-Gore White House and their representatives of the **[Clinton-Gore]** White House Counsel Office thereby testified falsely when they claim they did not hear of the threats until the threats became public. *See* Ruff Testimony, August 28, 2000 Tr.

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at 72 - 73; Breuer Testimony, October 19, 2000 Tr. at 55; Mills Testimony, September 1, 2000 Tr. at 97; Peterson Testimony, August 28, 2000 Tr. at 260.

434. The evidence detailed above shows that Northrop Grumman remained silent (misprision) about this obstruction of justice, threats, and witness tampering even as its employees and subcontractors were being threatened and removed from the Clinton-Gore White House. The weight of the evidence shows that this silence was for two reasons: 1) Northrop Grumman was concerned about the legal implications of its role in the Mail2 issue; 2) Northrop Grumman did not want to lose its $50 million plus contract with the Clinton-Gore White House.

435. Further evidence of Northrop Grumman's conspiracy with its customer, the Clinton-Gore [White House], and obstruction of this Court's proceedings can be found in the manner in which document productions, especially production of the document "Summary of Project X Discussions," has been handled.

436. On November 1, 2000, during Mr. Lucente's appearance before this Court, he disclosed that he had documents pertaining to the Mail2 problem in his brief case but that he had left the brief case at his attorney's office. At Plaintiffs' request, the Court recessed in order to allow Mr. Lucente to retrieve and produce these documents. Among the documents produced from his brief case was a copy of the document titled "Summary of Project X Discussions" which Vasta had authored at the request of his management to summarize what he had learned from Haas, Spriggs, Golas and Hawkins during several meetings in August and September[] 1998. *See* H. Ex. 113; Lucente Testimony, November 1, 2000 Tr. at 22 - 33; Vasta Testimony, November 3, 2000 [(afternoon)] Tr. at 23.

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437. During Mr. Vasta's testimony on November 3, 2000, he produced documents bearing Bates numbers JV00002 through JV000333. These documents were only produced to Plaintiffs the morning of Vasta's testimony. [*See*] Vasta Testimony, November 3, 2000 [(morning)] at 4.

438. Within these documents was another copy of the "Summary of Project X Discussions," with a fax cover sheet from Lucente to Laneta McCorkle, Jim DeWire's administrative assistant, dated September 9, 1998 and marked "Urgent." This document was buried at Bates numbers JV 78 - 79. *See* Vasta Testimony, November 3, 2000 [(morning)] at 12 - 13; H. Ex. 120.

439. Vasta has now disclosed that this document, as well as the remaining documents he produced at his appearance on November 3, 2000, had previously been provided to Earl Silbert, Esquire and Jack Bray, Esquire during a one to two hour meeting Vasta had with them in mid-June of this year to discuss the Mail2 problem. *See* Vasta Testimony, November 3, 2000 [(morning)] at 19 - 24.

440. These documents, and especially the "Summary of Project X Discussions," are obviously relevant to this case and responsive to numerous subpoenas that have been issued to Northrop Grumman, its managers and attorneys. *See* E-mail Hearing Exhibits 90, 95, 112, 119, 141. Nevertheless, this document had not been produced to Plaintiffs prior to Lucente's testimony. *See* Lucente Testimony, November 1, 2000 Tr. at 33 - 34; Vasta Testimony, November 3, 2000 [(morning)] at 15 - 18.

441. Given the obviously relevant and damaging content of the "Summary of Project X" combined with the fact that it has been in the possession of numerous company managers and

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attorneys, as well as the fact that as recently as June, 2000 it was reviewed by a key Northrop Grumman manager with his personal attorney and Northrop Grumman's attorney in a lengthy meeting having to do with this case, the failure to produce this document simply cannot be explained by innocent oversight or inadvertence. Accordingly, the Court infers and will find as a fact that this document was deliberately withheld by Northrop Grumman and its counsel because Northrop Grumman recognized that the document, as explained by Vasta in his testimony, confirms that its upper management and attorneys were notified of the threats to their employees prior to retaining Earl Silbert to contact the White House Counsel's Office. *See* E-mail Hearing Exhibit 120; Vasta Testimony, November 3, 2000 **[(morning)]** Tr. at 29-30; Vasta Testimony, November 3, 2000 **[(afternoon)]** Tr. at 2-6, 11, 22 - 25.

R. Despite Warnings from Plaintiffs and Others about Mail2, Clinton-Gore White House Continued to Present False Testimony and Withhold Information from the Court, Congress, and the Office of Independent Counsel.

442. In preparation for Mr. Lindsay's testimony before the House Subcommittee on the Treasury, Postal Service, and General Government Appropriations concerning the OA's appropriations request in March of 1999, input as to budgetary requirements were sought from OA staff. *See* Heissner Testimony, August 16, 2000 Tr. at 29-32.

443. Nevertheless, the OA staff identified Mail2 reconstruction as a budgetary requirement and included it in drafts of the briefing book prepared for Lindsay's March[] 1999 testimony. *See* Lindsay Testimony, August 23, 2000 Tr. at 156-157; H. Ex. 9-134 at E4395-4396.

444. On February 5, 1999, citing the activities of "litigants against the government," Karl Heissner (an IS&T Branch Chief), counseled against "call[ing] undue attention to the

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[Mail2] issue by bringing the issue to the attention of Congress," and in favor of "Let[ting] sleeping dogs lie[.]" *See* H. Ex. 35A[.]

445. All references to Mail2 and the funding required to solve Mail2 was deleted from the briefing book just prior to Lindsay's appearance. *See* Lindsay Testimony, August 23, 2000 Tr. at 157-158; H. Ex. 9-134 at E4395-4396.

446. Lindsay did not mention the Mail2 problem in his prepared statement or in his testimony before the Appropriations Subcommittee, nor was Mail2 mentioned or funds for Mail2 reconstruction included in the OA's 1999 budget request. *See* Lindsay Testimony, August 23, 2000 Tr. at 156-158; H. Ex. 36A.

447. Although Lindsay has stated that Y2K projects were consuming available resources in late 1998 and early 1999, as manager of the project he took no action to request additional funds to address the Mail2 problem. *See* Lindsay Testimony, August 23, 2000 Tr. at 159-162.

448. As it was in his briefing materials for his testimony, Lindsay was obviously aware of the Mail2 problem and the requirements to correct Mail2 when he testified to Congress in March 1999. *See* H. Ex. 9-134.

449. Funds were available for Mail2 reconstruction. The OA *Armstrong* account had $981,000 available for use in 1998 and another $500,000 may have been available from NARA. *See* H. Ex. 9-99.

450. Lindsay did nothing at all to address the Mail2 problem and missing e-mails.

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451. Lindsay did not bring the Mail2 and missing e-mail problem to the attention of Congress, the Independent Counsel, or this Court prior to February of 2000, nor did he do so voluntarily any time thereafter.

452. The evidence shows Lindsay's repeated promises to Gallant to look into the use of the funds were lies intended to delay and prevent public discovery of the e-mail.

S. Despite Being on Notice, Barry, [the] Clinton-Gore White House, and [the Clinton-Gore] Justice Department Continue[d] to Obstruct Justice and Commit Perjury By Filing An Additional False Declaration With This Court.

453. In April, 1999, the Clinton-Gore White House uncovered another e-mail problem it withheld from this Court.

454. On April 9, 1999, the Clinton-Gore White House discovered that e-mail for users whose last names begin with the letter "D" had not been records managed (archived on ARMS) since November[] 1998. *See* H. Ex. 9-125 at 2.

455. The e-mail for these users continued to be non-records managed until the programming error was corrected in June[] 1999. Heissner Testimony, August 16, 2000 Tr. at 21 - 22. The e-mails of these users for the period from November 1998 to June 1999 must be reconstructed before they can be archived or are available to be searched. Heissner Testimony, *Id.*

456. On June 14, 1999, Plaintiffs were forced to file a Motion to Compel Production of Documents Regarding Second Request to EOP. *See* H. Ex. 58. At [the Clinton-Gore White House's] invitation, Plaintiffs at that time submitted a list of e-mail accounts and search terms to be used for a search of Clinton-Gore White House e-mail. *See* H. Ex. 58 at 26-27, Request 28.

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457. In response to this Motion to Compel, the Clinton-Gore White House again submitted a false declaration concerning e-mail in July 9, 1999. That declaration, again by Barry, falsely stated that:

> Since July 14, 1994, e-mail within the EOP system administered by the Office of Administration has been archived by the EOP Automated Records Management System (ARMS). With this current system, this e-mail is susceptible to being word-searched (e.g., "FBI" or "FBI files") or a multiple character string ("and" and "or" searches) found on any one line of text.

See H. Ex. 42 (Declaration of [Tony] Barry, July 9, 1999) at ¶ 4.

458. Barry was working closely with attorneys in the Clinton-Gore White House Counsel's office and the [Clinton-Gore] Department of Justice in drafting and revising this Declaration. *See* H. Ex. 66 (Fayngold), 68, 72 (Baron), 39-1051814 -20, 39-1051832 -41 (Peterson) and 72, 39 - 1051823 -27, 39-1051832 -41, 39-1051849 -54, 39-1051855 -59 (Giles); Baron Testimony, August 31, 2000 Tr. at 89 - 108.

459. Peterson had allegedly performed the "comparison" of the Haas Mail2 documents in June 1998. *See* Peterson Testimony, August 28, 2000 Tr. at 193.

460. Peterson also had been in court when the *Insight* article was brought forward and then allegedly assisted in the DOJ investigation of the issues it raised. *See* Peterson Testimony, August 28, 2000 Tr. at 177 - 178.

461. Peterson recalls working with Barry's "superior or people within the Office of Administration," including Dottie Chleo, on the drafting of this Declaration. *See* Peterson Testimony, August 28, 2000 Tr. at 220 - 221.

462. While Peterson acknowledges that there was joint responsibility between her and the attorneys in the Clinton-Gore Justice Department for the accuracy of the Declaration, she

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made no "effort ... to determine paragraph by paragraph that what Barry was saying was accurate in Exhibit 42 [Barry's July 9, 1999 Declaration]." *See* Peterson Testimony, August 28, 2000 Tr. at 222.

463. Prior to reviewing the July 1999 Declaration, Baron had met with Lindsay about the fact that e-mail was coming "into the [Clinton-Gore] [White House] complex, and was not being captured" due to a "computer glitch." *See* Baron Testimony, August 31, 2000 Tr. at 45 - 47, 50 - 51.

464. Baron had also spoken to Clinton-Gore OA officials Mike Lyle, Esq. and Kate Anderson, Esq. in the Office of Administration about the Letter D problem in April 1999, and understood that this problem could be causing records to be not properly archived, or illegally destroyed or modified. *See* Baron Testimony, August 31, 2000 Tr. at 60 - 62 ("I have a clear recollection in that conversation of telling them that independent of the Armstrong case, you have the Federal Records Act responsibilities. Because they said the letter D, it may be accounts that are both Federal Records Act accounts and Presidential Records Act accounts, depending on whether the e-mail was in one place at the White House or another. And I did advise them that under the Federal Records Act there are provisions, 44 U.S.C. 2905, 3106, that talk to the issue of destruction or modification of records, and that they needed to be aware of those.")[]

465. Barry signed the July 9, 1999 Declaration under oath and understood that if he signed the declaration and it was false that that would be a crime. *See* Barry Testimony, August 17, 2000 Tr. at 132.

466. The Clinton-Gore White House and [Clinton-Gore] Justice Department lawyers have also allowed Barry's false testimony of June 11, 1998 and Declaration of March 4, 1998 to

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remain on the record before the Court. *See* H. Ex. 59 (Opposition by Defendant EOP to Plaintiffs' Motion to Compel Documents Regarding Second Request to EOP, filed July 9, 1999) at 28-31 (Barry July 9, 1999 Declaration is attached as Exhibit D), and H. Ex. 60 (Plaintiffs' Reply to Opposition to Plaintiffs' Motion to Compel Documents Regarding Second Request to the EOP, filed July 29, 1999) at 18-19.

467. Despite their knowledge that e-mail since July[] 1994 and other **[Clinton-Gore White House]** e-mail were not and would not be searched in response to document requests from Plaintiffs or any other legal entity, neither Barry, the Clinton-Gore White House, Clinton-Gore White House officials, and **[Clinton-Gore]** Justice Department lawyers alerted this Court, Congress, or [I]ndependent [C]ounsel to the e-mail problem and the resulting effect on document productions. *See* Lindsay Testimony, August 23, 2000 Tr. at 34, 44-45, 118.

468. Barry, the Clinton-Gore White House, Clinton-Gore White House officials, and **[Clinton-Gore]** Department of Justice lawyers failed to inform Congress or any other agency of the government, the Office of Independent Counsel, this Court, or counsel for the Plaintiffs of the existence of the Mail2 problem or any other problem with the archiving of e-mail. *See* August 23, 2000 Tr. at 34, 44-45, 118.

469. Barry, the Clinton-Gore White House, Clinton-Gore White House officials, and **[Clinton-Gore]** Department of Justice lawyers failed to inform Congress or any other agency of the government or this Court of the need for funds or resources to analyze the Mail2 problem and correct it. *See* August 23, 2000 Tr. at 34, 44-45, 118.

T. <u>Clinton-Gore White House Lied To Court About Hillary Clinton's E-mail</u>.

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470. As stated above, on October 27, 1998, Plaintiffs filed their Second Set of Requests for Production of Documents to the Executive Office of the President.

471. Request 21 of Plaintiffs' Second Set of Requests for Production of Documents to the Executive Office of the President sought the following:

> All laptop and desktop computers used by or assigned to Hillary Rodham Clinton, which contain or contained information or recordations relating to Travelgate, Filegate, the White House Office Database ("WHODB") computer system, or the obtaining or use of FBI files or government records, or the information contained therein.

472. Request 22 of Plaintiffs Second Set of Requests for Production of Documents to the Executive Office of the President sought the following:

> All floppy disks, zip drives, magnetic tapes, and similar removable data storage devices used by Hillary Rodham Clinton, which contain or contained information or recordations relating to Travelgate, Filegate, the WHODB computer system, or the obtaining or use of FBI files or government records, or the information contained therein.

473. On January 14, 1999, the Clinton-Gore [White House] submitted its responses to Plaintiffs' Second Set of Requests for Production of Documents to Plaintiffs. In response to Request 21, the Clinton-Gore [White House] represented, in part, that "[n]o EOP laptop or desktop computers are used by or assigned to Hillary Rodham Clinton." *See* EOP's Response to Plaintiffs' Second Document Request at 19.

474. In response to Request 22 of Plaintiffs' Second Set of Requests for Production of Documents, the Clinton-Gore [White House] represented, in part, that:

> No EOP laptop or desktop computers are used by or assigned to Hillary Rodham Clinton, and accordingly no floppy disks, zip drives, magnetic tapes and similar removable data storage devices responsive to this request exist.

See EOP's Response to Plaintiffs' Second Document Request at 19.

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475. On January April 22, 1999, the Clinton-Gore [White House] submitted supplemental responses to Plaintiffs' Second Set of Requests for Production of Documents to Plaintiffs. In its supplemental responses to Requests 21 & 22 of Plaintiffs' Second Set of Requests for Production of Documents, the Clinton-Gore [White House] represented that:

> *According to EOP's records*, no laptop or desktop computers have ever been assigned to Mrs. Clinton. EOP has inquired and is unaware of Mrs. Clinton using White House computers either for any purpose relating to the subject matters of these requests, or, for that matter, to carry out any of her official duties as First Lady. Accordingly, EOP has no documents or things responsive to Request Nos. 21-22.

See EOP's Supp. Response at 11 (emphasis added).

476. Then, on July 9, 1999, the story changed again and the Clinton-Gore White House acknowledged for the first time in its Opposition, the existence of one e-mail account established under the First Lady's name:

> EOP recently learned that an e-mail account under the First Lady's name was established, for the first time, on June 4, 1999 for the sole purpose of sending a single e-mail and receiving responses. The account was used to send an e-mail on June 7, 1999 to EOP employees concerning "DC Reads Voluntary Opportunity" which provided information on volunteering for a reading program with Washington, DC students. This account was deactivated on June 9, 1999. Although the e-mail was sent under the First Lady's name, she did not participate in drafting the message, in putting the message into the computer or sending it.

See EOP Opposition to Plaintiff's Second Motion to Compel at 11, fn. 16.

477. On August 14, 2000, Mr. Haas revealed that, contrary to the representations made by the Clinton-Gore White House to this Court and to Plaintiffs, another e-mail account in Hillary Clinton's name does in fact exist and that an employee of Mrs. Clinton, Alice Pushkar, has access to it. *See* Haas Testimony, August 14, 2000, Tr. at 93-94, 98-99.

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478. Mr. Haas also testified that, contrary to the representations made by Defendant Clinton-Gore [White House] to this Court and to Plaintiffs, alias or pseudonym e-mail accounts in the White House exist for Defendant Hillary Rodham Clinton, President Clinton as well as Vice-President Gore and Tipper Gore:

[By Mr. Klayman:] Are you aware that some e-mail accounts were kept under aliases in the White House? You did know that, didn't you?

[By Mr. Haas:] No.

[By Mr. Klayman:] You're aware -- if I don't use the word alias, that some e-mail accounts were kept under nicknames?

[By Mr. Haas:] Now, wait a minute. If you're talking about the principals, for security reasons I won't go into any part of this until we get some waiver. But there are ways in which we use alternative naming conventions to get mail to the four principals that are not public knowledge and won't be made public knowledge by me.

[By Mr. Klayman:] Who are --

[By Mr. Haas:] We're talking about Bill, Hillary, and Al and Mary Gore.

[By Mr. Klayman:] Mary Tipper Gore?

[By Mr. Haas:] Yes.

[By Mr. Klayman:] So they have accounts which are names that you can't identify who they are?

See Haas Testimony, August 14, 2000 Tr. at 109.

479. Mr. Haas further testified that Mrs. Clinton's alias account was created shortly after President Clinton entered office. *Id.*

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480. This false information about Defendant Hillary Clinton's e-mail is further evidence of the nefarious intent of the Clinton-Gore White House's representations on the Mail2 and related problems.

U. Whistleblowers Expose Clinton-Gore White House's Obstruction of Justice, False Testimony.

481. On February 19, 2000, Plaintiffs filed with the Court their "Emergency Motion to Supplement Plaintiffs' Motion to Compel and Request for Evidentiary Hearing" (hereinafter "Emergency Motion").

482. In support of that Motion, Plaintiffs submitted a sworn Declaration executed by Sheryl Hall ("Hall"), a career civil servant with the rank of GS-15, who, from October 1992 until September of 1999, had been employed with the EOP as a computer specialist. *See* H. Ex. 1 at 1.

483. In her February 19, 2000 Declaration, Hall verified that in the course of her duties with the **[Clinton-Gore White House]**, she had learned of the facts and circumstances surrounding what is now known as the Mail2 problem[]. *See* H. Ex. 3 at 2.

484. Her Declaration set forth a broad description of the Mail2 problem which has now been substantiated by the evidence adduced in this hearing. *See* H. Ex. 3 at 2, 3.

485. On February 19, 2000, the same day Plaintiffs' filed their Emergency Motion (and four days after a *Washington Times* article detailing Hall's core charges appeared), a list of sixty-two persons who had worked for the Clinton Administration and who are currently deceased was left on Haas's chair on February 19. *See* H. Ex. 77, Haas Testimony, August 14, 2000 Tr. at 48-49.

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486. This list was an implicit threat against Haas's life and intended to influence his testimony in this case in favor of the Clinton-Gore White House.

487. On February 25, 2000, the Plaintiffs filed with the Court their "Second Supplement to Emergency Motion to Compel and Request for Evidentiary Hearing."

488. Filed with this pleading was the sworn declaration of Betty Lambuth ("Lambuth"), who was an employee for a subcontractor to Northrop Grumman working at the Clinton-Gore White House from October 1997 through July 1998. *See* H. Ex. 10 at 1, 4; Lambuth Testimony, July 13, 2000 Tr. at 84.

489. Lambuth's Declaration testimony, which corroborated Hall's, included a detailed and accurate first[-]hand description of the facts and circumstances surrounding Mail2. *See* H. Ex. 10.

490. Lambuth attested that she and her staff were ordered not to take any written notes or divulge anything relating to Mail2 to any individual, including their Northrop Grumman superiors, by Office of Administration General Counsel Mark Lindsay ("Lindsay") and Laura Crabtree ("Crabtree"), a managerial official for the Information Systems and Technology Division of the Office of Administration ("IS&T Division"). *See* H. Ex. 10 at 2.

491. Lambuth's Declaration further detailed the threats of loss of employment and incarceration made to her and those on her staff who knew of Mail2 by Lindsay and Crabtree should they disobey the order of silence imposed upon them. *See* H. Ex. 10 at 2-3.

492. From January of 1998 to October of 1998, Kathy Gallant ("Gallant") was the Associate Director for the IS&T Division. *See* Gallant Testimony, August 1, 2000 Tr. at 109-110.

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493. Her job duties were managerial , and included responsibility for computer operations, mainframes, and for overseeing the performance of Northrop Grumman's contract with the [Clinton-Gore White House]. *See* Gallant Testimony, August 1, 2000 Tr. at 106.

494. In February, 2000, Gallant was contacted by phone at her place of work by James Gilligan, a Department of Justice attorney serving as a counsel in this matter. *See* Gallant Testimony, August 1, 2000 Tr. at 208.

495. Gilligan and Gallant discussed the Mail2 problem and the Mail2 reconstruction project for approximately 1-1/2 hours. *Id.* at 208.

496. During their conversation, Gallant told Gilligan that:

> . . . I was aware - - of the problem; that I was aware that people had been threatened; that I took action to try to get the problem resolved; that I had a - - we had a strategy for how we could use the money we were assured by Mark Lindsay that getting that money to solve the problem wouldn't be a problem, and that, you know, we had folks working on the problem as best we could. People told me they had been threatened by Laura [Crabtree]. I believe I told him that I thought she was capable of threatening those folks. I had seen that behavior before from her.

See Gallant Testimony, August 1, 2000 Tr. at 208-209.

497. On May 10, 2000, Gallant signed a declaration confirming the substance of her conversation with Gilligan.

498. This Declaration was filed with this Court on May 11, 2000 in conjunction with Plaintiffs' Motion to Amend Supplements Dated May 2 and May 5, 2000 Regarding ARMS E-Mail and Non-Records Managed E-Mail and For Leave to File Fifth Supplement to Emergency Motion to Supplement Plaintiffs' Motion to Compel and Request for Evidentiary Hearing.

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[Supp.][R]. **The Clinton-Gore Justice Department Submitted a False Finding That "Gilligan Spoke Briefly to Gallant in Mid-March" (Clinton-Gore Mem at 52, n.28).**

498a. While Gallant's testimony and declaration are specific and detailed about this interview, the notes taken by Clinton-Gore Justice Department attorney James Gilligan of his conversation of with Gallant are cursory and were intentionally undated. [*See*] Exhibit A to Memorandum of Points and Authorities of the U.S. Department of Justice in Opposition to Plaintiffs' Oral Motion to Compel, dated August 7, 2000.

498b. The Court finds that Gallant's account of her February 2000 conversation with Clinton-Gore Department of Justice attorney James Gilligan is more credible than the account given by Mr. Gilligan of that conversation.

499. On March 6, 2000, the Clinton-Gore White House filed a pleading in this case entitled "Executive Office of the President's Memorandum in Opposition to Plaintiffs' Requests to Restrict Disclosure of the First and Second Supplements to Plaintiffs' Motion for Evidentiary Hearing, and in Support of Cross-Motion for Expedited Consideration."

500. In that pleading, Clinton-Gore Justice Department counsel made the following statements at pages 1, 6, 8, and 14-16 respectively:

> Plaintiffs have filed a series of interconnected motions based on offensive allegations that Executive Office of the President ("EOP") has suppressed evidence, and threatened witnesses, concerning the existence of electronic mail records in the White House.
>
> * * *
>
> As a threshold matter defendant observes that plaintiffs' latest rhetorical outburst concerning e-mail can only be described as yet another "distraction from the issues in this lawsuit."
>
> * * *
>
> But even more implausible is plaintiffs' suggestion that EOP would (or could) retaliate against individuals who testify.

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* * *

> The history of this litigation teaches . . . that plaintiffs' accusations of witness intimidation and retaliation cannot be taken at face value, and the Court should be loath to award relief of any kind predicated on the presumed accuracy of these charges.

* * *

> The fact is that EOP has no inclination or ability to retaliate against witnesses or have them fired.

501. Also[,] on March 6, 2000, the Clinton-Gore White House filed its"Executive Office of the President's Motion for an Extension of Time to Respond to Plaintiffs' Motions to Supplement Plaintiffs' Motion to Compel Regarding the Second Document Production."

502. In that pleading, Clinton-Gore Justice Department counsel made the following statement at page 5:

> . . . [P]laintiffs' allegations with respect to e-mail searches are simply another distraction from the central issues in this case and another example of plaintiffs chasing the morning headlines . . . .

503. On March 9, 2000, the Clinton-Gore White House, through Justice Department [C]ounsel, filed its "Executive Office of the President's Opposition to Plaintiffs' Motion for 'Emergency' *Ex Parte* Conference and to Motion for Leave to File Emergency Motion Under Seal."

504. Therefore, as early as February 2000, the Clinton-Gore Justice Department had independent confirmation that these threats had, in fact, been made, yet it vehemently denied this fact in subsequent submissions to the Court. *See* Executive Office of the President's Memorandum in Opposition to Plaintiffs' Requests to Restrict Disclosure of the First and Second Supplements to Plaintiffs' Motion for Evidentiary Hearing, and in Support of Cross-Motion for Expedited Consideration, filed on or about March 6, 2000, at 1, 6, 8, 14-16. *See also* Executive

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Office of the President's Motion for an Extension of Time to Respond to Plaintiffs' Motions to Supplement Plaintiffs' Motion to Compel Regarding the Second Document Production, filed on March 6, 2000, at 5. *See also* Executive Office of the President's Opposition to Plaintiffs' Motion for "Emergency" *Ex Parte* Conference and to Motion for Leave to File Emergency Motion under Seal, March 9, 2000, at 8 n.5.

505. These false pleadings were signed by the following attorneys: John Anderson, Ann Weisman, James Gilligan, Elizabeth Shapiro, Allison Giles, Julia Fayngold-Covey.

V. **Obstruction of Justice Continues.**

506. This obstruction of justice continued even in the midst of court hearings and litigation on the subject in 2000.

507. Following publication of a *Washington Times* article exposing key aspects of the Mail2 scandal on February 15, 2000, Joe Lockhart, President Clinton's then Press Secretary, talked to the White House Counsel's Office about Mail2 and then he, John Podesta, President Clinton's Chief of Staff, and Beth Nolan, White House Counsel briefed President Clinton prior to a press appearance. *See* H. Ex. 77 at 1, Podesta Testimony, October 10, 2000 Tr. at 25 - 31; E-mail Hearing Testimony of Beth Nolan (hereinafter "**[Nolan Testimony]**"), November 2, 2000 Tr. at 94-95.

508. During this briefing, Podesta and Lockhart discussed Mail2 with Clinton so he would tell the press that the White House Counsel's Office had tried to comply with subpoena requests and was investigating the matter. They did not tell Clinton to tell the press that the [Clinton-Gore] White House Counsel's Office had fully complied with all subpoena requests. *See* Podesta Testimony, October 10, 2000 Tr. at 28-34.

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509. Nevertheless, when Clinton was asked about the matter minutes after the briefing, he stated "I believe that we have complied with every single request" and that "I think we are in full compliance. I believe we are." *See* Podesta Testimony, October 10, 2000 Tr. at 28-34; H. Ex 99.

510. This false public statement has never been corrected by the President. *See* Podesta Testimony, October 10, 2000 Tr. at 90-92.

511. In fact, months later, Clinton spokesman Jake Siewert expanded on that falsehood. In a *Washington Post* article titled "E-Mail Searches Skip Private Clinton, Gore Accounts" and published on August 18, 2000, White House Spokesman Jake Siewert stated, in response to questions about Mail2, "[w]e have searched the entire e-mail system to be as responsive as possible." Mark Lindsay also tried to promote this lie to this Court. *See* H. Ex. 77 at 5; Lindsay Testimony, August 23, 2000 Tr. at 81-82, 85.

512. Despite Mark Lindsay's attempt to falsely characterize Siewert's statement as truthful, this statement is false because there are still thousands of back up tapes that had yet not been searched. *See* Lindsay Testimony, August 23, 2000 Tr. at 85 - 89.

513. The Clinton-Gore White House continued to lie to the Court about e-mail problems. Based on representations made to this Court in the Declaration of Leanna Terrell, which stated that responsive e-mail was unlikely to be anywhere but the [Clinton-Gore] White House Office "bucket," Plaintiffs narrowed the scope of their requested ARMS search. *See* Executive Office of the President's Response to Plaintiffs' Supplement to Plaintiffs Motion to Compel Production of Documents Regarding Second Request to EOP (re: ARMS e-mail), May

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12, 2000, Ex. A (Terrel Declaration) at ¶ 5; Plaintiffs Reply to the EOP's Response to Plaintiffs Supplement at 5.

514. Also relying in part on this Declaration, the Court further narrowed the scope of the ARMS search to the [Clinton-Gore] White House Office "bucket." *See* June 5, 2000 Memorandum Opinion at 23-25.

515. Nowhere in Terrell's Declaration (nor anywhere else in the record prior to the Court hearings on these issues), were the Court or Plaintiffs notified of the ARMS "bucket" problem. *See, e.g.*, H. Ex. 64 at E-2152-2155, E-2162, E-2200, E-2402-03, and E-2410-2411; *see also* H. Ex. 9-21; August 1, 2000 Tr. at 154-57.

516. Consequently, as large numbers of responsive e-mail could be in other "buckets," the search of the ARMS system ordered by the Court on June 5, 2000 was inherently flawed.

517. The only requests for funding from Congress by the [Clinton-Gore White House] for e-mail reconstruction came after the public statements by Ms. Hall and Ms. Lambuth disclosing Project X and the Mail2 problem.

518. The first request for funding for e-mail reconstruction was a March 20, 2000 letter from Lindsay to the Treasury, Postal Service and General Government Appropriations Subcommittee of the House Committee on Appropriations (hereinafter "Appropriations Subcommittee") requesting the release of *Armstrong* funds and containing his "legal conclusion that it would be inappropriate to do so." *See* Lindsay Testimony, August 23, 2000 Tr. at 162.

519. Mr. Lyle, the current Director of the OA, testified before the Appropriations Subcommittee on March 23, 2000.

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520. In his testimony, Mr. Lyle did not request any additional funds for Mail2 reconstruction and admitted that funds had not been requested prior to Mr. Lindsay's March 20, 2000 letter. *See*, Lyle Congressional Appropriations Testimony at 43 .

521. Mr. Lyle also admitted that the *Armstrong* funds were available and were intended for ARMS related projects such as Mail2, but that the funds had not been used to correct the Mail2 problem. *See* Lyle Congressional Appropriations Testimony at 41 - 43.

522. Stuart Hanley, an employee of OnTrack[,] was contacted by the Clinton-Gore White House in February, 2000 regarding a data recovery project involving the duplication of numerous back-up tapes from **[Clinton-Gore]** White House servers. *See* E-mail Hearing Testimony of Stuart Hanley (hereinafter "Hanley Testimony"), July 14, 2000 Tr. at 102; E-mail Hearing Testimony of Jennifer Zeller (hereinafter "Zeller Testimony"), July 27, 2000 Tr. at 46.

523. OnTrack is widely regarded as the leading company in the world in computer data recovery. *See* Hanley Testimony, July 14, 2000 Tr. at 102

524. Representatives of OnTrack eventually met with several employees of Defendant **[Clinton-Gore White House]** on February 29, 2000. *Id.* at 114. Lois Loser and Terry Misich attended this meeting. *Id.* at 106.

525. OnTrack informed the Clinton-Gore White House that they had sufficient equipment and employees to complete the project contemplated, which at that time consisted of duplicating approximately 800 back-up tapes. *Id.* at 106, 112.

526. Mr. Hanley testified that he informed the Clinton-Gore White House at the February 29, 2000 meeting that OnTrack would have had enough employees and equipment to handle a duplication job of between 3000-6000 tapes. *Id.* at 115.

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527. In addition, OnTrack had software already prepared that could be used to restore data from the Clinton-Gore White House's copied back-up tapes. *Id.* at 112.

528. In addition, OnTrack is authorized to handle national security information. *Id.* at 104.

529. Mr. Hanley testified that the entire job contemplated by the Clinton-Gore White House would have cost between $5-$7 million, well within the $8-$10 million budgeted by the Clinton-Gore White House to recover the missing Mail2 e-mail. *Id.* at 118-123.

530. Approximately two to three weeks after OnTrack's meeting with the Clinton-Gore White House, OnTrack learned that the job had been assigned **[to a Clinton-Gore White House]** subcontractor, SRA, through **[the Clinton-Gore White House]**'s primary contractor ECS. *Id.* Evidentiary Hearing at 107.

531. OnTrack is careful to keep a close watch on potential competitors. Mr. Hanley testified that he had never heard of ECS or SRA. *Id.* at 103, 109.

532. Jennifer Zeller, OnTrack's Director of Product Line Management, testified that when she learned that the Clinton-Gore White House had bypassed OnTrack, she called ECS to offer to assist SRA with the Mail2 recovery project. Tr. of 7/20/00 Evidentiary Hearing at 46-50. Ms Zeller testified that she was told by Mr. Eric Duong, the president of ECS, that SRA did not require any assistance from Ontrack. *Id.*

533. At least two employees of SRA, including Dorothy Cleal and John Dankowski, are former employees of the Clinton-Gore White House. *See* Paul Sperry, "'The Fix Is In' On E-Mail Fix?", www.WorldNetDaily.com, April 5, 2000.

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534. Michael R. Sullivan, Deputy Director for General Services Division in the [Clinton-Gore White House]'s Office of Administration, testified that ECS was hired because it is a an "8-A" contractor which had been certified by the Small Business Administration. Tr. of 7/17/00 Evidentiary Hearing at 67.

535. Mr. Sullivan testified that hiring an 8-A contractor would eliminate the need for competitive bidding by contractors on the Mail2 recovery project, and thus expedite the recovery of the subject e-mail. Tr. of 7/14/00 Evidentiary Hearing at 67-73.

536. All this testimony on the alleged 8-A and other contracting requirements was a fabrication. On October 10, 2000, Chief of Staff John Podesta admitted that he had instigated the hiring of SRA. The truth was John Podesta was directly involved in formulating the technical response to Mail2 in February 2000 and initiated the hiring of SRA as the contractor to perform the reconstruction and searches of the Mail2 back up tapes. SRA was hired because they were referred by an associate of Podesta's in the White House, John Koskinen, and employed a former government employee who Mr. Koskinen knew. Podesta contacted this employee before initiating the hiring of SRA as the subcontractor to ECS, the minority prime contractor. *See* Podesta Testimony, October 10, 2000 Tr. at 15-16, 64, 80 - 84.

537. ECS was not hired for the reasons stated to this Court by the Clinton-Gore White House. ECS was hired as front company for SRA, which had already been hired for its political connections to John Podesta and the Clinton-Gore White House. This shows Podesta's, the President's Chief of Staff, continuing involvement in the e-mail scandal.

538. As the Court hearings in this matter continued, evidence continued to be destroyed.

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539. In March 2000, Haas still had a file containing Mail2 related e-mail. *See* Haas Testimony, August 14, 2000 Tr. at 142.

540. Haas copied this file to a Zip disk which he gave to Al Leister in Northrop Grumman's front office, who apparently then transferred it to Chuck Easley. *See* Haas Testimony, August 14, 2000 Tr. at 142 - 144.

541. The file was later mysteriously erased from the Zip disk. Specifically, Easley was working with the file late one day and then when he came in the next day, the Zip disk was empty; the file had been erased. Easley could not explain this since his office was locked overnight. *See* Haas Testimony, August 14, 2000 Tr. at 145 - 147.

542. This existence of this Zip disk only became known to the Court after Plaintiffs counsel, using information gained from Sheryl Hall, raised it. Ms. Hall understood that the Zip disk was intended to be hidden from the Court, unless it was specifically asked for in discovery. *See* Hall Testimony, July 31, 2000 Tr. at 135-136.

543. The Clinton-Gore White House has continued to intimidate and retaliate against witnesses in this case. On June 19, 2000 Howard "Chip" Sparks signed a Declaration setting forth his knowledge of Project X, the threats, and other issues. This declaration was filed with the Court. *See* H. Ex. 37; Sparks Testimony, August 16, 2000 Tr. at 69.

544. A current Clinton-Gore White House employee, Mr. Sparks, came forward to this Court at great risk to his career.

545. After signing and filing the Declaration, Sparks' office in the Clinton-Gore White House was broken into and, he was later moved from a corner office to a smaller, non-private cubicle. *See* Sparks Testimony, August 16, 2000 Tr. at 69 - 70.

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546. This [intimidatory] and retaliatory activity was in response to Sparks testifying before this Court.

547. The Clinton-Gore White House also planned to destroy additional computer evidence in the midst of the various proceedings on these matters. In an effort to prevent further document destruction, Plaintiffs presented to this Court Sheryl Hall's Fourth Declaration detailing Clinton-Gore White House plans to destroy the backed-up tapes of hard drives of Clinton-Gore White House staffers which are made as staffers leave the White House or transfer to another office within it. *See* Fourth Declaration of Sheryl Hall, March 7, 2000 at ¶4 (H. Ex. 4).

548. These archived tapes have been evidence in this case for a long period. *See* Memorandum Opinion, July 10, 2000 at 2-4.

549. In response, on April 3, 2000, the Clinton-Gore White House filed a Declaration signed by Michael Lyle, the current Director of the Clinton-Gore Office of Administration (OA). The carefully worded Lyle affidavit said "no proposal is *actively* under consideration" to destroy the hard-drive tapes or to stop making them. *See* Executive Office of the President's Response to Plaintiffs' Request for an Evidentiary Hearing Regarding EOP Computer Hard Drives at Ex. A. (emphasis added).

550. The refusal of Lyle to deny Ms. Hall's allegation leads to the inference that Clinton-Gore White House planned to destroy additional computer evidence in this case and were only stopped when the plan was exposed by Ms. Hall.

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551. The Clinton-Gore White House ignored an April 27, 2000 Court directive to produce e-mails within 170 days and lied to it about meeting this deadline. *See* Transcript of Motions Hearing, April 27, 2000 at 33.

552. The Clinton-Gore White House concocted technical and cost reasons for a delay in the production of e-mail, as predicted by Sheryl Hall. *See* Second Declaration of Sheryl Hall at ¶7 (H. Ex. 2); Nolan Testimony, November 2, 2000 Tr. at 42-45.

553. Nearly one year after the e-mail scandal was uncovered by Plaintiffs, the Clinton-Gore White House has only completed a search of 25 (twenty-five) tapes of back-up e-mail. The bulk of the e-mail at issue has still not been searched.

[Supp.][S]. **The Clinton-Gore Justice Department['s] Explanation That Barry's Declarations and Testimony Are True Because He Was Describing "What ARMS does and [not] what ARMS contains" is Preposterous.**

553a. To date the Clinton-Gore [White House] still has not admitted what is obvious to everyone else: that Barry's declarations and testimony are simply false.

553b. Barry admitted to Howard Sparks that ARMS was not capturing all incoming and internal e-mail in 1997 and that the problem had not been fixed. [*See*] Sparks Testimony, August 16, 2000 Tr. at 74-75. [*See also*] Barry Testimony, August 21, 2000 Tr. at 26.

553c. Barry's admission that [what] he discovered in January, 1998 [that the Mail2 problem] was likely a systemic [problem], raises a strong evidentiary inference that he knew his declarations of March 4, 1998, March 30, 1998 and July 9, 1999 were false when he signed them. [*See*] H. Ex. 9-49; Barry Testimony, August 3, 2000 Tr. at 56-58, 67-83.

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553d. No fair-minded person could believe the statements regarding ARMS contained in Barry's March 4, 1998, March 30, 1998 and July 9, 1999 [Declarations]. [*See*] August 25, 2000 Tr. at 14-20.

553e. Nevertheless, the Clinton-Gore White House has continued to promote Barry's "preposterous" interpretation of his affidavit adding further support to the inference that it is a willful participant in the ongoing cover up.

W. <u>The President and Mrs. Clinton Must Have Known of the E-Mail Coverup</u>.

554. Hillary Clinton oversaw the development of the a computer database, known as the White House Office Database (hereinafter "W[ho]DB") with the assistance of Clinton-Gore White House officials Marsha Scott, Eric Vaden, and Laura Tayman. *See* H. Ex. 1 at ¶ 5.

555. Hillary Clinton had operational control of the Clinton-Gore White House, including but not limited to, the hiring and firing of personnel. Her agents in the direction of the [Clinton-Gore] White House included Marsha Scott and her chief of staff Margaret "Maggie" Williams. *See* H. Ex. 1 at ¶ 6. According to Linda Tripp, Mrs. Clinton "ruled the school." *See* Deposition Transcript of Linda Tripp at 359.

556. Hillary Clinton knew about Project X, and the Office of the First Lady regularly reviewed the results of e-mail searches in response to subpoenas. *See* H. Ex. 3 at ¶ 15.

557. OA officials Virginia Apuzzo, Ada Posey, Katherine "Kate" Anderson, Laura Crabtree, in addition to Clinton-Gore White House official Marsha Scott had access to the [Clinton-Gore] White House residence and were on "familiar" terms with Hillary Clinton. *See* Hall Testimony, July 31, 2000 Tr. at 43-44.

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558. Posey reported to Assistant to the President for Management and Administration Jody Torkelson until she left the Clinton-Gore White House, and then, in August, 1997, Posey reported to Podesta and Sylvia Matthews, the Deputy Chiefs of Staff who reported to Chief of Staff Bowles. Bowles reported to the President. [*See*] Posey Testimony, August 16, 2000 Tr. at 140-143.

559. Around the time Mail2 was uncovered in 1998, Podesta regularly reported to the Chief of Staff. Podesta would advise the **[Clinton-Gore White House Counsel's Office]** if there were problems with document production. [*See*] Podesta Testimony, October 10, 2000 Tr at 16-17.

560. Podesta and Lockhart briefed President Clinton on the Mail2 problem. *See* Podesta Testimony, October 10, 2000 Tr. at 31.

561. President Clinton knew about the Mail2 problem. *See* Podesta Testimony, October 10, 2000 Tr. at 31-32.

562. President Clinton, head of the Defendant Clinton-Gore White House, lied to the American people about the Mail2 scandal. When President Clinton was asked about the e-mail scandal by the media, he falsely stated "I believe that we have complied with every single request" and that "I think we are in full compliance. I believe we are." *See* Podesta Testimony, October 10, 2000 Tr. at 28-34; H. Ex 99.

563. The evidence adduced to date raises an evidentiary inference that President Bill Clinton knew of and approved early on of the obstruction of justice, threats, and false testimony on Mail2.

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564. The evidence adduced to date raises an evidentiary inference that Defendant Hillary Rodham Clinton knew of and approved early on the obstruction of justice, threats, and false testimony on Mail2.

[Supp.][T]. <u>President and Mrs. Clinton Were Directly Involved</u>.

564a. Marsha Scott, acting under the direction of Hillary Rodham Clinton and President Clinton, oversaw the construction of the WhoDB. Hall Testimony, July 31, 2000 Tr. At 33.

564b. A September 6, 1993 memorandum from Marsha Scott to Capricia Marshall, concerning, among other things the WhoDB, stated that "I will keep you informed as we progress. Once I understand the technical formatting, I would like to discuss with you, Bruce [Lindsey], and Hillary, all of the privacy and access concerns." [*See*] H. Ex. 6; Hall Testimony, July 31, 2000 Tr. 44-45.

564c. A January 26, 1994 memorandum from Marsha Scott to Hillary Rodham Clinton and Bruce Lindsey, consists of an Intern Natural Database Update, which was related to the development of the WhoDB. H. Ex. 7. Hall Testimony, July 31, 2000 Tr. 49-50.

564d. When Sheryl Hall objected to the portion of this January 26, 1994 memorandum that called for the WhoDB to be used for political purposes, Marsha Scott became angry with Ms. Hall and told Hall to either assist with development of the WhoDB or she (Scott) "would take it higher," meaning ultimately to Hillary Rodham Clinton. [*See*] Hall Testimony, July 31, 2000 Tr. 50-51. *See also* H. Ex. 1, ¶¶8, 9.

564e. Hillary Rodham Clinton, acting through Clinton-Gore White House employees Marsha Scott, Maggie Williams, and Craig Livingstone among others, had operational control of The Clinton-Gore White House. H. Ex. 1, ¶¶6, 7.

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564f. Chief of Staff John Podesta was interviewed by both Hillary Clinton and President Clinton when he interviewed for a job as Assistant to the President. *See* Podesta Testimony, October 10, 2000 Tr. 6-7.

564g. Bill Clinton was concerned with and directly involved in document productions, having allegedly instructed Clinton-Gore White House Counsel Charles Ruff that the Clinton-Gore White House should fully comply with subpoenas from litigants, Congress and the Independent Counsels. *See* Podesta Testimony, October 10, 2000 Tr. 35-36.

564h. The Office of the First Lady routinely reviewed document productions before they were produced to litigants, Congress, and independent counsels. *See* Mills Testimony, September 1, 2000 Tr. 114-117.

56[4i]. All this evidence further shows that Hillary Rodham Clinton knew or had reason to know about the Mail2 cover-up.

[Supp.][U]. **The Testimony of Many of the Clinton-Gore [White House] Witnesses Was Simply Not Credible as They Were Evasive On The Stand And [Had] Significant Lapses of Memory.**

565a. Throughout these proceedings, the Clinton-Gore participants in the Mail2 scandal have consistently feigned failures of memory on critical facts. This not only raises the inference that they are participating in an ongoing cover up but also indicates that their testimony is not credible and should be given little weight. *See, e.g.*, Lindsay Testimony, August 23, 2000 Tr. at 142-143; Mills Testimony, September 1, 2000 Tr. at 72, 81-82; Ruff Testimony, August 28, 2000 Tr. at 62, 65, 82-86.

[Supp.][V]. **The Clinton-Gore [White House] Has Conceded That Mail2 Was Not A Priority To Them Despite Its Obvious Impact on This Court and Other Tribunals.**

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565b. The Clinton-Gore White House admits at page 40 of its Memorandum that Mail2 "was not a top priority within OA" and cites to testimony to that effect. *See* Clinton-Gore Mem. at 40; Lindsay Testimony, August 23, 2000 Tr. at 153, 173 (Y2K crisis had priority.); Apuzzo Testimony, September 22, 2000 Tr. at 82-83 (Since Y2K was priority, Lindsay did not request funds to fix Mail2.). This lack of attention to Mail2 is reflected in, among other things, the Clinton-[G]ore **[White House]**, **[Clinton-Gore]** Justice Department and **[Clinton-Gore]** White House Counsel's **[Office's]** failure to properly evaluate Mail2 and its affect on document productions in June, 1998 and their failure to properly investigate the allegations in the *Insight* article.

565c. In spite of the Clinton-Gore White House's admission, the witnesses from the Clinton-Gore **[White House]** have attempted to convince the Court that they **did** take Mail2 and document productions very seriously when it served their interests. *See* Ruff Testimony, August 28, 2000 Tr. at 61-62 (Ruff knew that Mail2 was a potential problem "which needed to be explored . . .."); Baron Testimony, August 31, 2000 Tr. at 45-62 (Lindsay discussed potential impact of Mail2 with Baron.); Lindsay Testimony, August 23, 2000 at 57 (Lindsay claims that because Mail2 was a "serious problem" he "made it a very high priority to fix it as soon as possible."); Mills Testimony, September 1, 2000 Tr. at 36-37 (Ruff and the entire **[Clinton-Gore White House Counsel's Office]** took document productions "seriously."). The evidence is the Clinton-Gore White House, and its lawyers in the **[Clinton-Gore]** White House Counsel's Office and **[Clinton-Gore]** Department of Justice knew about the importance of Mail2 and its negative impact on document productions and chose to keep this Court, Congress, and every [I]ndependent [C]ounsel in the dark about the problem.

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[Supp.][W]. **The Testimony of Karl Heissner Refutes Every Major Argument Made By The Clinton-Gore Justice Department.**

565f. The testimony of one witness, Karl Heissner, a relatively neutral Clinton-Gore White House employee with 25 years experience[,] refutes every major argument made in the Clinton-Gore White House's Memorandum. *See generally* Heissner Testimony, August 15, 2000 and August 16, 2000 Transcripts.

565g. Heissner, who worked with Crabtree and currently works for the Clinton-Gore White House, learned, through his duties and responsibilities, that Crabtree issued threats. Heissner also thought that Crabtree was quite capable of issuing threats. *See* Heissner Testimony, August 15, 2000 Tr. at 70-72.

565h. As early as late 1998, Heissner knew of the threats made Clinton-Gore White House officials, and associated Mark Lindsay with these threats. *See* Heissner Testimony, August 15, 2000 Tr. at 88-90.

565i. On behalf of the Clinton-Gore White House and as its Branch Chief for the System Integration & Development Branch, Heissner did a thorough examination of the Mail2 issue in late 1998, interviewing many Northrop Grumman and Clinton-Gore White House officials about the problem. *See* Heissner Testimony, August 15, 2000 Tr. at 72-73, 99-100.

565j. Heissner, who talked with Barry about his discovery of the Mail2 problem, confirmed for the Clinton-Gore White House and this Court that Mail2 was discovered by Barry in early 1998. Barry then gave this information to his IS&T management, specifically his Clinton-Gore White House supervisor Jim Wright. *See* Heissner Testimony, August 15, 2000 Tr. at 71-76, H. Ex. 24-E001-004; *see also* H. Ex. 24-E4428.

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565k. The Clinton-Gore White House was on notice in January, 1998 that federal law required that the e-mail at issue "be archived for future retrieval." *See* H. Ex. 24-E001-004, 24-E1188-1191, 24-E1459-1460.

5651. In the ordinary course, after learning about Mail2 in early 1998 from Barry, Jim Wright would have reported the Mail2 to his superior Dorothy Cleal (a.k.a. Dorothy Schott). Ms. Cleal would then, in the ordinary course, have reported this information to the Director of Office of Administration, Ada Posey or Mark Lindsay, who then would have reported Mail2 to their superior Virginia Appuzzo, who would have then reported to the Chief of Staff of the White House (John Podesta). Mr. Podesta would, in the ordinary course, then have reported to his superior, the President of the United States, Bill Clinton. *See* Heissner Testimony, August 15, 2000 Tr. at 83-84.

565m. Heissner confirmed that the Mail2 problem was so significant, because of its impact on the document requests to the courts, Congress, and [I]ndependent [C]ounsels, that it would have been reported at the time of its discovery up the chain of command through the President of the United States. *See* Heissner Testimony, August 15, 2000 Tr. at 84-85. Heissner and others in the Clinton-Gore White House knew about the potential impact of Mail2 on this case. *See* Heissner Testimony, August 15, 2000 Tr. at 85[.]

565n. Heissner prepared reports on the Mail2 problem for his Clinton-Gore White House superiors so that they could alert the various government authorities requesting documents, including this court. *See* Heissner Testimony, August 15, 2000 Tr. at 99-100, H. Ex. 24-E001-004, 24-E118-1191, 24-E1459-1460.

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565o. The Clinton-Gore White House knew that Northrop Grumman had the capability to fix the Mail2 problem with weeks and months. *See* Heissner Testimony, August 15, 2000 Tr. at 92-93.

565p. Clinton-Gore White House officials were concerned about their failure to correct the ARMS problems, which went on at least into 1999. *See* Heissner Testimony, August 15, 2000 Tr. at 103-109, H. Ex. 9-125 (Dorothy Cleal e-mail to Michael Lyle (copied to Mark Lindsay): "This is amazing.").

565q. The Clinton-Gore White House was concerned about the impact of problems with the Mail2 and related errors on document productions. *See* Heissner Testimony, August 15, 2000 Tr. at 111.

565r. Heissner knew that because it [a]ffected document production to courts and [I]ndependent [C]ounsels, "there should have been no attempt to keep the [Mail2] problem quiet." *See* Heissner Testimony, August 15, 2000 Tr. at 94-95.

565s. Heissner, a current employee of the Clinton-Gore White House who had responsibility for Mail2, [noted] that courts, [I]ndependent [C]ounsels, and Congress should have been notified about Mail2 by various officials in the Clinton-Gore White House Office, including Ada Posey, Michael Lyle, Mark Lindsay, Virginia Appuzzo. *See* Heissner Testimony, August 15, 2000 Tr. at 94-100.

565t. The White House Counsel's Office had special responsibility to alert authorities about Mail2:

[By Mr. Klayman:] But based upon your 25 years of experience in working in the White House, you understood that White House Counsel would have notified the courts, Independent Counsel and Congress about the problem.

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[By Mr. Heissner:] That's what one might expect, yes, sir.

[By Mr. Klayman:] In the ordinary course of the way things work at the White House?

[By Mr. Heissner:] That's correct.

[By Mr. Klayman:] And you relied upon them to do so.

[By Mr. Heissner:] That's correct.

See Heissner Testimony, August 15, 2000 Tr. at 96.

565u. The OA Counsel's Office provided no direction to Heissner to solve the Mail2 problem, he was doing it "on his own." *See* Heissner Testimony, August 15, 2000 Tr. at 115.

565v. Other officials in OA, such as Nell Doering[,] expressed frustration about the lack of action to retrieve the missing Mail2 e-mail. *See* Heissner Testimony, August 15, 2000 Tr. at 117, H. Ex. 9-116 ("Action, *Punt*!!, and Smile!" (emphasis added)).

565w. Mark Lindsay should have, because of document requests and other legal requirements, informed Congress about Mail2 in 1999:

[By Mr. Klayman:] So in the ordinary course of your duties and responsibilities in the White House, you understood that if there was a problem as serious as Mail2, that Mr. Lindsay would bring it to the attention of Congress.

[By Mr. Heissner:] One might expect that, sir, yes.

[By Mr. Klayman:] And the reason that one might expect that is because of document requests sent by Congress to the EOP.

[By Mr. Heissner:] That's correct

[By Mr. Klayman:] And also because of the Presidential Records Act.

[By Mr. Heissner:] Yes.

See Heissner Testimony, August 15, 2000 Tr. at 126.

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565x. The Clinton-Gore White House knew that Mail2 was as important as Y2K:

[By Mr. Klayman:] -- you didn't consider producing documents to a court, like this Court, or Congress or the Independent Counsel to take second seat to Y2K, did you?

[By Mr. Heissner:] That's difficult to say. Y2K was a very serious problem, and the resources marshaled to address that were quite significant. If I had to make a judg[e]ment call, I would probably consider them both equally important and try to somehow match resources with the particular work that needed to be done.

[By Mr. Klayman:] And with that in mind, it was hard for you to understand why funding wasn't provided to fix Mail2?

[By Mr. Heissner:] Yes, that's correct.

See Heissner Testimony, August 15, 2000 Tr. at 145.

565y. The Clinton-Gore White House was quite aware of the significant legal risks due to failure to take care of the Mail2 problem and the resultant unarchived e-mail. According to a Clinton-Gore White House document, these risks were "moderately high." *See* H. Ex. 24-E1049-1072 at 1050; Heissner Testimony, August 15, 2000 Tr. at 160-161.

565z. The Clinton-Gore White House knew it would be unable to comply with the law and turn the records over to the National Archives at the end of the Clinton-Gore Administration unless the Mail2 problem was fully solved. *See* H. Ex. 24-E1049-1072 at 1050; Heissner Testimony, August 15, 2000 Tr. at 160-161.

565aa. The underlying Mail2 problem was still causing problems as of June, 1999 – which is when "the so-called bleeding stopped." In fact, it had reemerged through the Letter D problem (which was also hidden from this court, Congress, and independent counsels). *See* Heissner Testimony, August 15, 2000 Tr. at 172, 181-182; H. Ex. 24-E3218-3221.

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565bb. Even as late as October, 1999, top Clinton-Gore White House officials (including Barry, OA Counsel Catherine Anderson, OA Director Michael Lyle, and Assistant to the President Mark Lindsay), had reason to know e-mail was still not being properly managed by the ARMS system because of Mail2. *See* Heissner Testimony, August 15, 2000 Tr. at 187-189; H. Ex. 24-E4484.

565cc. As noted in Plaintiffs' Finding of Fact Number 44, on February 5, 1999, citing the activities of "litigants against the government," Karl Heissner (an IS&T Branch Chief), counseled against "call[ing] undue attention to the [Mail2] issue by bringing the issue to the attention of Congress," and in favor of "Let[ting] sleeping dogs lie[.]" *See* H. Ex. 35A.

565dd. Heissner understood "litigants against the government" to include Plaintiffs in this case. *See* Heissner Testimony, August 15, 2000 Tr. at 194.

565ee. Heissner admitted that it was a reasonable conclusion that the conduct of his Clinton-Gore White House superiors was to "let sleeping dogs lie" with respect to Mail2. *See* Heissner Testimony, August 15, 2000 Tr. at 196, *see also* 191-197.

565ff. Karl Heissner, who was charged with managing the Mail2 problem for the Clinton-Gore White House, was never consulted by any Clinton-Gore Administration lawyer (OA Counsel, White House Counsel, nor Department of Justice) about the December, 1998 [*Insight*] article on Project X. *See* Heissner Testimony, August 15, 2000 Tr. at 165-166.

565gg. Even when the Clinton-Gore White House went to "fix" Mail2 after it became publicly known, Heissner was not consulted. *See* H. Ex. 24-1413; Heissner Testimony, August 15, 2000 Tr. at 168.

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565hh. Heissner was "relieved" to be taken off the Mail2 project because of the stress the project caused him and his concern about the legal ramifications of "being painted with a broad brush of not being cooperative or not solving the problem." *See* Heissner Testimony, August 15, 2000 Tr. at 174-176.

Respectfully submitted,

JUDICIAL WATCH, INC.

Larry Klayman, Esq.
DC Bar No. 334581

Paul J. Orfanedes, Esq.
DC Bar No. 429716
501 School Street, S.W.
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(202) 646-5160

Attorneys for Plaintiffs

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CERTIFICATE OF SERVICE

I hereby certify that on January 24, 2001rect copy of the foregoing PLAINTIFFS' INTEGRATED PROPOSED FINDINGS OF FACT was served by first-class mail, postage prepaid, on the following:

Attorneys for Defendants Federal Bureau of Investigation and Executive Office of the President:

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Allison Giles, Esq.
Thomas Millet, Esq.
U.S. DEPARTMENT OF JUSTICE
P.O. Box 883
Washington, DC 20044

Attorneys for Defendant Hillary Rodham Clinton:

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Attorneys for Northrop Grumman:

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Richard J. Oparil, Esq.
PIPER, MARBURY, RUDNICK & WOLFE, LLP
1200 Nineteenth Street, NW
Washington, DC 20036

Jason Aldrich

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TAB 3

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In the Matter of:

Cara Leslie Alexander, et al v.
Federal Bureau of Investigation, et al

Trial Volume 1
August 2, 2000

Miller Reporting Company, Inc.
735 8th Street, S.E.
Washington, DC 20003-2802
(202) 546-6666 FAX: (202) 546-1502

Original File 0802ALEX.ASC, 215 Pages
Min-U-Script® File ID: 0852425870

Word Index included with this Min-U-Script®

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Page 73

THE COURT: Overruled.
THE WITNESS: I have been doing this stuff for 23 years. I have written a number of programs enough that if you gave me an application to write, I could probably rewrite the application without looking at the book. I don't think not being able to write it down was a hinderance, at least not for me.
BY MR. KLAYMAN:
Q: But in this case, you couldn't solve it?
A: I don't think that was the reason why we couldn't solve it. I think if we had been given resources—
Q: You weren't given resources.
A: Well, we weren't able to talk to anybody about getting resources. I mean, we were told not to talk to anybody except for Betty, Laura, and Mr. Lindsay.
Q: And that was a big problem?
A: Yes, sir.
Q: Having Betty removed from the project was also a big problem, because you didn't have a supervisor?
A: Pardon me?
Q: Having Betty removed was also a big problem?
A: Left us without Northrop-Grumman manager, yes.
Q: It was Northrop-Grumman that removed her, correct?
A: Yes, sir.
Q: So Northrop-Grumman created this problem?

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MR. MILLET: Objection.
THE COURT: Overruled.
You don't have to answer that. Didn't somebody named Webster come in? Do you remember him?
THE WITNESS: Sir, what happened was they told us that they were restructuring and they wouldn't need someone at Betty's level, so they were bringing a technician in who was a subcontractor—a subcontractor.
And part of the problem that Mr. Hawkins had been complaining about was the fact that Ms. Lambuth was not Northrop-Grumman. She was an executive manager.
They brought in Mr. Webster and said that he was our manager. Well, he wasn't our manager. He was only like a team leader. Even then, he wasn't my team leader. Because when Betty left, they reorganized and they put Mr. Haas—I believe, Mr. Haas and myself in different groups. So we didn't—didn't respond—work with him. He wasn't my manager.
BY MR. KLAYMAN:
Q: So given the state of the affairs—couldn't talk to anybody, no management—the whole process of trying to solve the problem came to a halt?
MR. MILLET: Object to the form.
THE COURT: Overruled.
THE WITNESS: It was crawling, sir.

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BY MR. KLAYMAN:
Q: Now, quite apart from the technical side of things during that month period between the point of this meeting with Ms. Crabtree where jail was mentioned, no notes, no talking up to the point of the naming of the project Project X about a month, you testified, roughly?
A: Roughly, I don't have—
Q: I'm not holding you to it. There were obviously more discussions about the jail?
A: Yes.
Q: Tell us all about those discussions. You had more discussions with Mr. Haas, several discussions with Mr. Haas?
A: Well, my—it started right after the meeting. I walked out and had this—there had been a problem before the meeting that I was working on—another system that I was working on.
When I came out of the meeting, I went back to my office and Mr. Wright came back in and wanted to me to—to know the status of the problem, the other problem.
I said I was working on—I said I was working on something else at the moment and that I would get back with him. And he said well, this is really important, you know. He became rather outspoken and said this is very important. I need to know what is it that you're working on that you

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can't work on this.
I said I'm working on the e-mail issues. I need to know specifics. I said well, I can't tell you all the specifics, and he demanded that I told him. And I said I'm really busy. I can't tell you.
So he said you can tell me. I'm the COTR. He says if you're not going to tell me, you're going to tell your manager. Come with me, and we'll go down and talk to Steve.
Q: Steve Hawkins?
A: So I closed down what I was doing, and he was ahead of me. He went down and I followed him into Mr. Hawkins' office, and he essentially said that—something to Steve what is that your people are working on that they can't tell me and you don't know about? Steve was very startled and became very upset.
Mr. Wright tried to explain that he had tried to get me to talk about what was going on and I wouldn't tell him. He left. Mr. Hawkins and I had a conversation at which he got very loud and told me that I had 30 minutes to tell him what was going on or I could pack my bags.
I believe this is the way it happened. I said—I left. We walked out of the office, and I ran into Mr. Spriggs at some point, either coming or going downstairs with management, Mr. Haas, and told him that I had 30

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Page 77

minutes to clean my stuff up, what I had done briefly.
He said don't do anything. He said I'll go off and see about fixing this. Betty was at the doctors. I went upstairs and got a telephone call, and it was from the front office, please come back downstairs. I went back downstairs and Mr. Hawkins wanted to talk to me again.
He started to try to get me to talk to him. He said, you know, you're bordering on being insubordinate, and I looked at him and I said if it's a choice of being insubordinate or going to jail, I guess I'll have to go be insubordinate. At which point I think the conversation ended.
As I was leaving, the phone in our office rang. Steve went back into his office, and I believe Dee told him that Mr. Lindsay was on the phone and wanted to talk to him, but I was not privilege to that conversation.
Q: Who is Dee?
A: Pardon me?
Q: Who is Dee?
A: Ms. Chapman is the administrative assistant that sits in the office area. She handles the phones for the project manager and business manager and stuff.
Q: For Mr. Hawkins?
A: Yes.
Q: At that time?

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A: Yes.
Q: For Northrop-Grumman?
A: Yes.
Q: Anything else?
A: No. He didn't never mention the 30 minutes again. So I—he didn't push it anymore. So I didn't—I wasn't—I figured if it was—he was going keep to secret service, and he never said anything. So I continued to work normally.
Q: What do you mean by ending up with secret service? Is that when you get escorted off the premises?
A: Yes.
Q: You're aware of the ramifications of being escorted off the premises?
A: Yes. They take your badge. You don't get a chance to clean out your desk. You're escorted off the property.
Q: You've seen that before in the White House, haven't you?
A: Not personally, but I've heard it.
Q: What have you heard about it?
MR. MILLET: Objection. Hearsay.
THE COURT: Overruled.
THE WITNESS: We've had several cases where people—the security officers come in and ask people, not unwarranted mind you, to leave. They ask—they've stood

Page 79

there and said collect whatever you can collect. We'll pack up whatever's left and deliver it to you.
BY MR. KLAYMAN:
Q: When did you first start working in the EOP?
A: July of '96.
Q: Have you heard anything ever being discussed about the travel office?
MR. MILLET: Objection.
THE COURT: Sustained. Nice try.
MR. KLAYMAN: I don't want to get into the travel office.
THE COURT: You're not going to.
MR. KLAYMAN: You said you can't get into under any circumstances.
THE COURT: Yes. Under any circumstances, you're not going to get into the travel office.
MR. KLAYMAN: The basis for it, just for the record is that there is an understanding in the White House as to what happened up to that point in time with regard to any circumstance. It's part of their state of mind. That was the reason for the question.
BY MR. KLAYMAN:
Q: Now, you are aware that when you're escorted out of the White House that can have ramifications for your security clearance, future employment?

Page 80

MR. MILLET: Objection. Leading.
THE COURT: Overruled.
THE WITNESS: I don't know. I'm not—I'm not personally—I just—I would think that being escorted out would be humiliating enough. I don't know what happens after that. All I know is they can come take you out of the office, escort you out.
BY MR. KLAYMAN:
Q: It's not good for your employment record, is it?
A: I wouldn't imagine so, sir.
Q: Might make it more difficult to get another job?
A: Depended on the reason and if it was valid or not.
Q: Who would judge that?
MR. MILLET: Objection, Your Honor. This is way far afield.
THE COURT: Sustained.
BY MR. KLAYMAN:
Q: I take it Ms. Lambuth was at the doctor then came back?
A: I believe so.
Q: You had a conversation with her about what happened?
A: I believe so, yes, sir.
Q: You repeated to her exactly what happened, which you just told us?

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LAURA JEAN LEWIS

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UNITED STATES COURT OF APPEALS
FOR DISTRICT OF COLUMBIA CIRCUIT
NOV - 8 2001
RECEIVED

October 22, 2001

Michael S. Fordham
214-758-1510
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United States Court of Appeals
For the District of Columbia Circuit
FILED NOV - 8 2001
Special Division

Mark J. Langer, Clerk
United States Court of Appeals
District of Columbia Circuit
United States Courthouse
3rd and Constitution Avenue, N.W.
Washington, D.C. 20001

Re: In Re: Madison Guaranty Savings & Loan Association;
Division No. 94-1

Dear Mr. Langer:

I represent Ms. Laura Jean Lewis. As you know, Ms. Lewis was invited to examine portions of the Independent Counsel's Final Report (the "Report") in the above-referenced matter. Having reviewed those limited portions of the Report made available to her, Ms. Lewis submits the following limited comments and factual information to provide a more complete and accurate account of the matters described in the Report:

1. The Report quotes Assistant U.S. Attorney Mac Dodson as testifying that Ms. Lewis called a number of times to ask what his office was doing with the case (i.e. Criminal Referral No. C0004). The Report quotes Chuck Banks, then U.S. Attorney for the Eastern District of Arkansas as testifying that he told Mac Dodson to have Ms. Lewis call him if the RTC had a problem and that Banks never received a call from Ms. Lewis. As a matter of clarification and completeness, it should be noted that Mac Dodson never advised Ms. Lewis that Mr. Banks said she should call him if the RTC had a problem. In fact, Ms. Lewis has never had any conversations with Chuck Banks and only one (1) conversation with Mac Dodson in January of 1994 regarding a FOIA request received by the RTC.

2. The Report also quotes Chuck Banks as testifying that the only one who seemed to be asking him to issue subpoenas was Ms. Lewis. However, Mr. Banks' own testimony directly contradicts this assertion when he is quoted as stating that he never spoke to Ms. Lewis. Furthermore, Ms. Lewis' other contact with Mr.

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Bank's office was through conversations with Special Agent Steve Irons; however, she never discussed or suggested the issuance of subpoenas with Mr. Irons.

3. The Report quotes Paula Casey, then U. S. Attorney Designee for the Eastern District of Arkansas, as testifying that it was "abundantly clear" Ms. Lewis was leaking information to the press. This unsubstantiated allegation is absolutely false. Moreover, Ms. Lewis documented and reported every press contact she received to both her supervisors at the RTC, as well as the Office of the Independent Counsel. As a matter of routine, this issue was investigated by the Office of Independent Counsel and resolved in favor of Ms. Lewis.

Ms. Lewis appreciates the opportunity to provide these clarifying comments and additional factual information. Of course, until Ms. Lewis has an opportunity to review the entire Report, she will not be in a position to determine whether any further comment or clarification is required. Ms. Lewis respectfully requests that her comments be included in the Report.

Sincerely,

Michael S. Forshey

MSF/sh

Cc: Jean Lewis

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BARBARA LINDEMANN

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Paul*Hastings*

United States Court of Appeals
For the District of Columbia Circuit

FILED NOV 1 3 2001

Special Division

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09071.00001

November 13, 2001

VIA MESSENGER

Marilyn R. Sargent
Chief Deputy Clerk
United States Court of Appeals
for the District of Columbia Circuit
333 Constitution Ave., N.W.
Room 5409
Washington, D.C. 20001

Re: *In Re: Madison Guaranty Savings & Loan Association*, Division No. 94-1 UNDER SEAL

Dear Ms. Sargent:

Enclosed please find for filing an original and 4 copies of a Motion for Leave to File Comments for Inclusion in the Appendix to Independent Counsel's Report, Time Having Expired; Declaration of Robert L. Corbin; and Exhibit "A" in the above-referenced case. It is my understanding you have spoken to Mr. Corbin about this filing. Please note that these documents are filed under seal. We have included an extra copy of the filing to be date stamped and returned to us via our messenger.

If you have any questions, please contact me at (202) 508-9525. Thank you for your assistance in this matter.

Sincerely yours,

E. Lawrence Barcella, Jr.

E. Lawrence Barcella, Jr.
of PAUL, HASTINGS, JANOFSKY & WALKER LLP

Enclosures

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SEALED

United States Court of Appeals

District of Columbia Circuit

United States Court of Appeals
For the District of Columbia Circuit

FILED DEC 13 2001

Special Division

Division for the Purpose of
Appointing Independent Counsels
Ethics in Government Act of 1978, As Amended

Division No. 94-1

IN RE: MADISON GUARANTY SAVINGS & LOAN
(IN RE: MADISON GUARANTY SAVINGS & LOAN ASSOCIATION)

Before: SENTELLE, *Presiding*, FAY and CUDAHY, *Senior Circuit Judges*

ORDER

This matter coming before the Court upon a motion for leave to file late the comments of Barbara Lindemann regarding the Final Report in the above-captioned matter, and it appearing to the Court that the motion is well taken, it is hereby

ORDERED that the motion be granted.

Per Curiam
For the Court:
Mark J. Langer, Clerk

by
Marilyn R. Sargent
Chief Deputy Clerk

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IN THE UNITED STATES COURT OF APPEALS
DISTRICT OF COLUMBIA CIRCUIT

In Re: Madison Guaranty Savings & Loan Association (In Re: Madison Guaranty Savings & Loan Association)	**UNDER SEAL** Division No. 94-1

MOTION FOR LEAVE TO FILE COMMENTS FOR INCLUSION IN THE APPENDIX TO INDEPENDENT COUNSEL'S REPORT, TIME HAVING EXPIRED; DECLARATION OF ROBERT L. CORBIN; EXHIBIT "A"

PLEASE TAKE NOTICE THAT Barbara Lindemann, an interested witness who is named in the Final Report submitted by Independent Counsel Robert W. Ray, Esq., in the above captioned matter, hereby moves, by and through counsel, for leave to file her comments, attached as Exhibit "A" herein, for inclusion in the appendix to the Report, time having expired. This motion is based upon Circuit Rule 26(b), the Declaration of Robert L. Corbin and the attached comments submitted on behalf of the witness.

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The Independent Counsel's office does not oppose the relief requested herein.

Dated: November 13, 2001

Respectfully submitted,

By: _____

E. Lawrence Barcella, Jr., Bar No. 49841

Paul, Hastings, Janofsky & Walker LLP
Tenth Floor
1299 Pennsylvania Avenue, N.W.
Washington, DC 20004-2400
Telephone: (202) 508-9500

_____

Robert L. Corbin

Corbin & Fitzgerald LLP
601 West Fifth Street, 12th Floor
Los Angeles, California 90071-2025
Telephone: (213) 612-0001
Facsimile: (213) 612-0061

Counsel for Interested Witness
Barbara Lindemann

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DECLARATION OF ROBERT L. CORBIN

I, ROBERT L. CORBIN, declare as follows:

1. I am a member of the State Bars of California, New York and a number of Bars of the United States Courts including the United States Courts of Appeals for the Second and Ninth Circuits and the United States District Court for the Central District of California. I am a partner at Corbin & Fitzgerald LLP and have practiced law for twenty nine years.

2. Barbara Lindemann was a witness in the investigation concluded by Independent Counsel Robert W. Ray. I have represented Ms. Lindemann throughout the investigation, having accompanied her to Little Rock, Arkansas in March, 1997 for her voluntary interview with the Independent Counsel's staff and appearance before the grand jury; traveled to Washington D.C. in May, 2001 to review excerpts of the Independent Counsel's Final Report pursuant to this Court's April 27, 2001 Order; and traveled again to Washington D.C. in October, 2001 for a meeting with Deputy Independent Counsel, Julie Thomas to discuss the one area of concern which I had after reviewing the Report on Ms. Lindemann's behalf.

3. Ms. Lindemann's comments for possible inclusion in the appendix to the Final Report were not submitted timely because of a calendering mistake which is solely my fault. I mistakenly noted November 13, 2001 as the submission date in my calender instead of this Court's date of October 24, 2001. I discovered this mistake on November 8, 2001 when I re-read this Court's April 27, 2001 Order while preparing to discuss a draft of the comments which I had prepared with Ms. Lindemann. This is the first time this has ever happened in my career and I apologize to both this Court and Ms. Lindemann.

4. Ms. Lindemann, who has had a distinguished career as an attorney, traveled to Little Rock at her own expense and was diligent in her response to the investigation. I urge

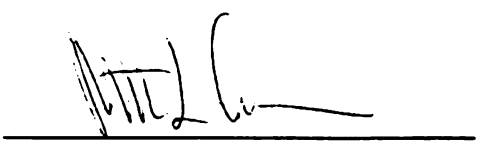
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this Court to permit her brief comments to be considered for inclusion in the historical record so that she will not be prejudiced because of a mistake which I made while representing her.

5. I have never been sanctioned, cited or held in contempt by any court, nor have any disciplinary proceedings ever been initiated against me by any state bar.

6. On November 9, 2001 I spoke with Julie Thomas, Esq. Deputy Independent Counsel in this matter who informed me that her office does not oppose this motion.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 9th day of November, 2001, at Los Angeles, California.



Robert L. Corbin

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TAB A

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LAW OFFICES OF
CORBIN & FITZGERALD LLP

ROBERT L. CORBIN
MICHAEL W. FITZGERALD

KEVIN F. RUF
OF COUNSEL

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WRITER'S DIRECT DIAL NUMBER
(213) 533-7030

November 9, 2001

Mark J. Langer, Clerk
United States Court of Appeals
District of Columbia Circuit
Washington, D.C. 20001-2866

Re: *In Re: Madison Guaranty Savings & Loan Association (In re: Madison Guaranty Savings & Loan Association). Report by Independent Counsel Ray*

Dear Mr. Langer:

This letter is written on behalf of Barbara Lindemann, a lawyer who served with distinction as an Assistant United States Attorney for the District of Columbia and as District Counsel for the U.S. Equal Opportunity Employment Commission, for inclusion in the appendix to Independent Counsel Ray's Report. Ms. Lindemann, who cooperated fully with the investigation, is mentioned briefly in the Report.

Regretfully, the report inaccurately states that Ms. Lindemann consulted with Webster Hubbell to obtain a Presidential appointment as a judge on the U.S. Court of International Trade. When the historical record, which includes her grand jury testimony is made available for inspection, the facts will establish that Ms. Lindemann only consulted with Mr. Hubbell about the most effective ways in which she might independently approach people who were responsible for evaluating her interest in government service.

Ms. Lindemann agrees with the Independent Counsel's conclusion that Mr. Hubbell was not consulted for an improper purpose and that at the time that Ms. Lindemann consulted with him, she and others reasonably believed him to be innocent of wrongdoing. Ms. Lindemann terminated her association with Mr. Hubbell as soon as it became evident that he had violated the law.

Very truly yours,

Robert L. Corbin

Robert L. Corbin

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the Motion For Leave To File Comments for Inclusion in the Appendix to Independent Counsel's Report, Time Having Expired; Declaration of Robert L. Corbin; and Exhibit "A" were hand-delivered to Julie Thomas, Deputy Independent Counsel, 1001 Pennsylvania Ave., N.W., Suite 490 North, Washington, D.C. 20004 this 13th day of November 2001.

E. Lawrence Barcella, Jr.

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MARK F. LINDSAY

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United States Court of Appeals
For the District of Columbia Circuit

FILED OCT 2 3 2001

Special Division

October 23, 2001

VIA COURIER

UNDER SEAL

Hon. Mark J. Langer
Clerk of the Court
United States Court of Appeals, District of Columbia Circuit
United States Courthouse, Room 5409
333 Constitution Avenue, NW
Washington, DC 20001-2866

Re: Final Report of the Independent Counsel,
In re: Madison Guaranty Savings & Loan Association
(In re: Madison Guaranty Savings & Loan Association)

Dear Mr. Langer:

As counsel to Mark F. Lindsay and on his behalf we submit this response to the Report filed by the Office of Independent Counsel in *In re: Madison Guaranty Savings & Loan Association (In re: Madison Guaranty Savings & Loan Association)* (hereinafter "Report"). We make this submission pursuant to 28 U.S.C. § 594(h)(2) and request that it be included in the appendix to the Report.

Mark F. Lindsay is a former White House employee who served in several capacities including Assistant to the President of the United States for Management and Administration. Mr. Lindsay played no substantive role in any of the events or activities described in the Report. Mr. Lindsay's sole involvement in this matter, which is referenced only in an Appendix, concerned the production of e-mail by the Office of Management and Administration to the Office of the Independent Counsel pursuant to instructions received from the White House Counsel's Office. In this context, while serving in various capacities in the Office of Management and Administration, Mr. Lindsay dealt with anomalies in the White House e-mail retention systems. One such incident, known as the Mail2 anomaly, concerned efforts to correct such retention deficiencies caused by a technical error.

Volume II, Appendix 3 of the Report describes two conversations in which Mr. Lindsay purportedly made threatening remarks to Ms. Betty Lambuth and other Northrup-Grumman ("NG") employees (who were contract employees working on the White House e-mail system) about the adverse consequences of revealing the existence of the Mail2 anomaly to anyone other than the team assigned to diagnose and fix the problem. The Report sets forth in some detail the strongly-conflicting recollections of the NG employees to whom the remarks allegedly were directed, which in and of itself casts significant doubt as to whether threats were ever made. The Report further sets forth Ms. Laura Callahan's strong denial that either she or Mr. Lindsay threatened anyone in connection with the

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Mail2 anomaly. Surprisingly, however, the Report fails to make any reference whatsoever to Mr. Lindsay's equally strong public denials, under oath on two separate occasions, that he ever threatened anyone in connection with the Mail2 problem. Testimony of Mark F. Lindsay, March 23 hearing before the House Committee on Government Reform at 199; Transcript of testimony of Mark F. Lindsay in Alexander v. FBI, Civil Action No. 96-2123 (D.D.C. August 23, 2000).

This material omission is particularly troubling in light of the fact that the Independent Counsel never requested an interview with Mr. Lindsay, which he would have gladly provided, consistent with his full cooperation with every other investigative body that has looked into the Mail2 matter. Moreover, the Report also fails to mention that Ms. Lambuth's account of a meeting with Mr. Lindsay was contradicted not only by Mr. Lindsay but by Paulette Cichon, who completely refuted Ms. Lambuth's allegations. Statement of Paulette Cichon (March 29, 2000), Hearings before House Committee on Government Reform.

Very truly yours,

Peter J. Kadzik
Elaine Metlin
Counsel to Mark F. Lindsay

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D. CRAIG LIVINGSTONE

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United States Court of Appeals
For the District of Columbia Circuit

FILED OCT 2 4 2001

Special Division

UNITED STATES COURT OF APPEALS
FOR DISTRICT OF COLUMBIA CIRCUIT
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October 24, 2001

BY HAND DELIVERY

Robert W. Ray, Esquire
Independent Counsel
c/o Mark J. Langer, Clerk
U.S. Court of Appeals for the
District of Columbia Circuit
United States Courthouse
333 Constitution Avenue, NW
Washington, D.C. 20001-2866

In re: Guaranty Savings & Loan Association, Division No. 94-1

ORIGINAL

Dear Mr. Ray:

I write on behalf of my client, D. Craig Livingstone, in response to that portion of the Report of the Office of Independent Counsel describing the Office's investigation of an unsubstantiated allegation that Mr. Livingstone and another man were seen leaving the West Wing of the White House "carrying boxes and perhaps a briefcase" at approximately 6:45 a.m. the day after Vince Foster's death.

Your Report accurately records that Mr. Livingstone did not even arrive at the White House until 8 a.m. that day, and properly concludes that there is no credible evidence either to substantiate the above allegation or to otherwise establish that Mr. Livingstone (or anyone else, for that matter) improperly removed documents from the White House either that morning or at any other time.

Objectionably, however, your Report nevertheless appears to go out of its way to leave a vague suggestion of possible, yet unspecified, misconduct in circumstances where none was found and none occurred. This, of course, not only defeats the purpose of conducting an exhaustive, independent investigation, but is also reminiscent of the irresponsible work of some prior Independent Counsels which the public had hoped would find no place in your long-awaited Report. Sadly, at least in this portion of your Report, that hope appears to have been misplaced.

I appreciate that even though the Report bears your name, the portion of the investigation involving Mr. Livingstone concluded several years before your appointment as successor Independent Counsel. As a result, you could hardly be expected to have personal knowledge of the facts of that aspect of the investigation. But having issued your Report with these errors in it, the harm is done and the record must now be corrected.

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The allegation that triggered this part of your Office's investigation was made by a guard at the White House named Abbott, who the morning after Mr. Foster's death told his supervisor that shortly after he had assumed his post that morning at 6:30, he had seen two men get off the elevator carrying boxes and perhaps a briefcase, and then exit the building. He said he believed one of the men was Mr. Livingstone. He reported this to his supervisor because he thought it was suspicious given the early hour at which it had occurred, which he placed at approximately 6:45 a.m.

When Mr. Livingstone was confronted with this allegation, we pointed out, first, that Mr. Livingstone frequently carried documents into and out of the West Wing of the White House as part of his normal duties as Director of the White House Office of Personnel Security, and therefore that there was nothing notable or inherently problematic about that aspect of Abbott's allegation. But more importantly, we established on the basis of the White House's and the Secret Service's own records that Mr. Livingstone did not arrive at the White House that morning until his normal arrival time of 8 a.m., and therefore that Abbott was mistaken.

Your Report faithfully records Mr. Livingstone's actual arrival time, albeit without mention that it was us, and not your Office, that did all the investigative work to establish that time. But your Report does not stop there. Instead, it records that your Office went back to Abbott to confront him with the evidence of Mr. Livingstone's arrival time, at which point Abbott simply changed his story and said that he could have seen the two men get off the elevator as late as 8:30 a.m. And rather than acknowledge that Abbott's testimony had conveniently changed when he learned what time Livingstone arrived, your Report proceeds thereafter to neutrally describe Abbott's testimony as being that the alleged event could have happened anytime between 6:45 and 8:30 a.m., as if that had been his testimony all along.

Apparently concerned about the credibility of Abbott's new testimony in light of why Abbott had made the allegation in the first place, investigators in your Office also went back to Abbott and got him to deny that there was any significance whatsoever to the time at which the alleged incident supposedly had occurred. Thus, here is what Abbott eventually testified to:

> I did not think that the time was significant when I talked to [my supervisor] – only the observation of what I had seen, not that the time was critical, because I was unaware of any factors involving time.

It is hardly surprising in light of this implausible denial and Abbott's changing testimony generally that he was ultimately deemed not to be credible. And while we can speculate forever about why Abbott said what he did, the important point is that his testimony about the men on the elevator was at best mistaken, and at worst a complete fabrication. What is surprising, though, is that despite concluding that there was no credible evidence that Mr. Livingstone or anyone else had removed documents from the White House in connection with Vince Foster's death, your Report nevertheless contains statements making contradictory

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implications. Indeed, the Report reads in places as if it had been written by several people, one of whom managed to slip a few sentences in the Report reflecting a dissenting view of the evidence.

Thus, at one point your Report accurately states that Mr. Livingstone denied being at the White House in the early morning hours of that day, and denied removing or carrying documents out of Mr. Foster's office. It then goes on to state, however, that, "Other evidence, including an eyewitness account, contradicts Livingstone's testimony about his whereabouts and activities on July 21." But in no meaningful or credible sense can Abbott be deemed an "eyewitness," nor can his uncorroborated and changing testimony fairly be deemed a "contradiction" of Mr. Livingstone's testimony, which never changed and which was corroborated by White House Secret Service entry records.

There are other examples of this kind of "schizophrenia," if you will, within just this small section of the Report, so I assume there must be other examples in other parts of the Report which have not been made available for my review. Such a self-contradictory result may be inevitable in a Report this long, written by as many authors as this one must have had, and that covered as many subjects by as many investigators as were involved in this matter. It is also one of the inherent evils of the Independent Counsel statute that the results of a criminal grand jury investigation must be detailed in a written report and then released, at the Court's discretion, to the public for its inspection. Such a report is flatly inconsistent with the rule of grand jury secrecy, one of the bedrock purposes of which is to protect persons from having the details of a criminal investigation made public unless there is a lawful basis to bring a criminal charge at the investigation's conclusion. In our system of laws, grand juries do not decline to indict but nevertheless go ahead and make public all the insinuation and uncredited testimony that occurred during the investigation. Neither should an Independent Counsel.

I recognize that you are not responsible for the Independent Counsel statute, and perhaps you join me in hoping the statute is now recognized to have outlived whatever usefulness it may once have had. But I and the rest of the country must, and do, hold you responsible for the unfair consequences of any Report issued by your Office, particularly to the extent it fails to put to rest the very allegations your Office was tasked to investigate and resolve. In my view it is a travesty to take this many years and expend this much of the nation's resources to reach an inconclusive or schizophrenic conclusion, especially when the lives of so many persons, including my client, hang in the balance.

I am quite certain I and Mr. Livingstone are not alone in hoping that this will be the last of these constitutionally suspect Independent Counsel Reports.

Sincerely yours,

Randall J. Turk

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BERNARD NUSSBAUM

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For the District of Columbia Circuit

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*OF DC BAR ONLY

June 21, 2001

SUBMITTED UNDER SEAL

Mark J. Langer
Clerk
United States Court of Appeals
District of Columbia Circuit
Washington, DC 20001-2866

ORIGINAL

Re: In re: Madison Guaranty Savings & Loan Association, Division No. 94-1
(In re: Madison Guaranty Savings & Loan Association)

Dear Mr. Langer:

By letter dated April 27, 2001, you advised me that the Court had entered an order authorizing me or my attorney to examine portions of the Final Report of Independent Counsel Ray in the above matter. Your letter states that I have the right to submit comments or factual information for possible inclusion in an appendix to the Report.

My attorney has reviewed the portions of the above Report that were made available to us. Those portions discuss certain of my actions as White House Counsel relating to (i) contacts between the Treasury Department and the White House Counsel's Office about referrals by the Resolution Trust Corporation to the Justice Department that mentioned President and Mrs. Clinton as possible witnesses; and (ii) the documents that were located in Deputy White House Counsel Vincent F. Foster, Jr.'s office at the time of his death. Because only limited

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portions of the Report were made available to us, I do not have the full context of what the Report says about me. It is clear, however, that the Report does, at times, examine and comment on some of my actions.

I consider it important that readers of the Report understand what I did and did not do -- and why -- and that they have the complete picture of my conduct discussed in the Report. Accordingly, I have attached my August 4, 1994 Statement before the United States Senate Committee on Banking, Housing, and Urban Affairs which discusses contacts between the Treasury Department and the White House Counsel's Office (Exhibit A hereto) and my August 9, 1995 Statement before the United States Senate Special Committee to Investigate Whitewater Development Corporation and Related Matters dealing with the documents in Mr. Foster's office (Exhibit B hereto).

I respectfully request that this letter and these exhibits be included in an appendix to the Report.

Sincerely,



BWN:sas

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Exhibit A

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STATEMENT OF BERNARD W. NUSSBAUM

BEFORE THE
COMMITTEE ON BANKING, HOUSING, AND
URBAN AFFAIRS
UNITED STATES SENATE

103RD CONGRESS, 2D SESSION
AUGUST 4, 1994

Mr. Chairman, Senator D'Amato, and Members of the Committee:

Introduction

I was Counsel to the President of the United States from January 20, 1993 until April 5, 1994.

I was deeply honored to serve my country. This was an extraordinarily challenging and rewarding position. I will never forget it, and I will always be grateful for the opportunity to serve.

We are here today to talk about issues which have significant consequences for the operation of the Executive Branch.

How should the White House Counsel conduct himself or herself when a federal agency is conducting an investigation that does, or might, involve the President?

Can there ever be any contact between that agency and the White House with respect to that investigation?

As you will see, I do not believe there is, or can be, any flat prohibition against contacts between the agency and the White House. Issues may arise in the context of such an investigation that implicate broader policy issues or, indeed, the proper functioning of the Executive Branch. In these circumstances, categorically to prohibit contacts with the White House would weaken the Presidency and do violence to the President's role in our constitutional scheme.

I am here specifically to discuss with you certain meetings I had with Treasury officials in September and October 1993 and February 1994 relating to the Madison/ Whitewater matter. I will describe to you in some detail what happened during those meetings.

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But I also wish to make it clear at the outset what did not happen. I did not, nor, as far as I am aware, did anyone else at the White House ever seek to direct the outcome of or interfere with that investigation. That would have been manifestly improper. That did not happen.

In my view -- and I hope yours when you understand what occurred -- these meetings were proper. They were proper because, in ways I will describe, they facilitated the proper functioning of the Executive Branch. They enabled the White House to perform its official duties. They furthered legitimate public purposes.

I will explain to you what I was thinking as I took the actions I will describe. There are some who, looking back, disagree with my judgments. But I hope you will come to understand that throughout my term in office, I sought to conduct myself in the highest traditions of public service and of my profession. I believe I did so.

Let me turn to the meetings and contacts.

Meetings and Contacts

September 29, 1993. On September 29, 1993, I attended a meeting with Treasury officials, including Treasury General Counsel Jean Hanson, in my office. The meeting, convened by Treasury officials, concerned a report the Department was about to issue on the Waco incident. At the end of the meeting, Ms. Hanson drew me aside and asked to speak to me.

Ms. Hanson said that the RTC had made or was about to make criminal referrals to the Department of Justice related to an Arkansas savings and loan association. She told me that the Clintons were not objects of the referrals, that is, they were not potential defendants. She said that one of the referrals related to certain checks that had gone to a Clinton gubernatorial campaign and there was a question whether these were proper contributions. She said the Clintons were mentioned as possible witnesses.

Ms. Hanson said that she was telling me about the referrals because she believed that this information would soon leak to the press. She believed the White House should be in a position to respond effectively and promptly to press inquiries.

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I called in Cliff Sloan, a member of my staff who had been at the Waco meeting. I asked Ms. Hanson to repeat to him what she had just told me. As she did that, Ms. Hanson added that she thought Deputy Treasury Secretary Roger Altman might previously have sent me some material relating to this subject. I told her that I did not recall that.

(Sometime later, she told Mr. Sloan that she had been mistaken, and that Mr. Altman, in March 1993, had merely faxed to me a 1992 New York Times article concerning the Clintons' Whitewater investment. I subsequently found that article in my files. But I do not recall having received it.)

I asked Mr. Sloan to be Ms. Hanson's point of future contact if she needed to speak further with us regarding press inquiries.

That concluded the discussion with Ms. Hanson. It lasted about five minutes.

Following the discussion, Mr. Sloan or I told Bruce Lindsey what Ms. Hanson had told us. Mr. Lindsey, a senior White House advisor, at that time normally responded, on behalf of the White House, to press inquiries concerning Arkansas matters.

October 14, 1993. On October 14, 1993, a meeting took place in my office between Treasury and White House officials. Jack DeVore, an Assistant Treasury Secretary for public affairs, had called Mark Gearan, the Director of White House Communications, the day before to ask for the meeting. Mr. DeVore explained to Mr. Gearan that the Treasury had received press inquiries related to the Madison referrals. He wanted to explain how Treasury would respond. Mr. Gearan asked me if the meeting could take place in my office.

I had previously issued memoranda to the White House staff -- similar to those of my predecessors -- counseling that contacts with agencies concerning pending adjudicative or investigative matters had to be cleared through the Counsel's office. We recognized that such contacts were potentially sensitive and that, as a general proposition, they should not occur. However, there was no flat prohibition.

We recognized that sometimes a contact would be necessary to enable the White House to discharge its official functions. In each instance, the Counsel's office was to be involved in order to ensure that the contact was limited to

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an exercise of official functions and did not entail any effort to interfere with or direct the outcome of the adjudication or investigation.

I agreed to the meeting that Mr. Gearan had described to me because I believed it would serve an official function. It was important for the White House to understand what the Treasury was going to say to the press, so that the White House could promptly and effectively respond to press inquiries it would inevitably receive.

The October 14 meeting was attended by Mr. DeVore, Ms. Hanson and Josh Steiner from Treasury, and Mr. Lindsey, Mr. Gearan, myself, Mr. Sloan and Neil Eggleston of my staff.

I remember Mr. DeVore explaining that Jeff Gerth, a New York Times reporter, was aware of referrals to the Department of Justice in the Madison Guaranty matter. He was asking why the referrals had been forwarded to Washington D.C. from Kansas City instead of directly to the United States Attorney's Office in Little Rock. Mr. Gerth apparently believed that the forwarding of the referrals to Washington was unusual and might suggest special treatment.

Mr. DeVore said he was going to advise Mr. Gerth that the referrals had been sent to the United States Attorney's Office in Little Rock before Mr. Gerth had called. A question was raised whether it was usual for the RTC to confirm criminal referrals. Mr. DeVore said that it was not usual, but it was done in certain circumstances.

We were also told that Mr. Gerth was inquiring, and would likely ask the White House, about the endorsements on four cashier's checks from Madison to the Clinton gubernatorial campaign. In essence, all that we were told at this meeting is what the New York Times was saying to Treasury and what Treasury was planning to say to the New York Times.

With respect to the referrals mentioned in the September 29 conversation and the October 14 meeting, I never saw a copy of them. Nor did I ever ask to do so.

Early January 1994. In early January 1994, Joel Klein, the new White House Deputy Counsel, told me that at the Renaissance weekend in South Carolina, which Mr. Klein attended, the President had sought to have a brief conversation with Eugene Ludwig, Controller of the Currency, asking for advice as to how to deal with the recent flurry of Whitewater stories.

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Mr. Klein said he told the President and Mr. Ludwig that it would be best if they did not speak about the matter. I told Mr. Klein I agreed and that he had done the right thing. At some later time, in a brief telephone call from Mr. Ludwig, I told him that I agreed with Mr. Klein.

I saw the President shortly thereafter. I told him I had heard about his brief conversation with Mr. Ludwig, and said it was also my view that he should not speak to Treasury officials about this matter. The President and I agreed that if there were any appropriate discussions to be had, they should be had by counsel -- either White House counsel if they involved official matters, or private counsel if they concerned purely private matters.

February 2, 1994. The next contact I recall occurred on February 2, 1994. On that day, I received a call from Mr. McLarty's office asking me to attend a meeting that evening in his office. When I arrived, I found Roger Altman, Ms. Hanson, Harold Ickes (the White House Deputy Chief of Staff), and Margaret Williams (the First Lady's Chief of Staff) in the room.

When I asked what the meeting would concern, I was told that Mr. Altman was going to brief us about the statute of limitations process being followed in the RTC's Madison Guaranty investigation. I then asked one of my staff, Mr. Eggleston, to join us.

At the outset of the meeting, Mr. Altman told us that he would be informing us about a process that had recently been discussed with members of Congress. He then described the RTC Completion Act, explaining that the statute of limitations with respect to civil fraud and intentional misconduct was due to expire on February 28, 1994 in the Madison matter.

He told us that the RTC would have to reach a decision by that date about whether there was a prima facie case of fraud or willful misconduct. He said the RTC would have three options: (1) bring a lawsuit if there was a good faith basis for one; (2) do nothing and let the statute of limitations expire; or (3) seek from potential defendants -- including possibly the Clintons -- tolling agreements extending the statute of limitations.

At no time did Mr. Altman say, as was claimed in a statement at the start of this hearing, that it was "unlikely that the investigation could be completed and a recommendation made by the General Counsel prior to the expiration of

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the statute of limitations." I remember him saying just the opposite -- that the RTC staff would be in a position prior to February 28 to make a recommendation as to which one of the three options to pursue. And to act on that recommendation.

It has been suggested that at the February 2 meeting the Clintons were given inside information which would permit them to safely reject any RTC request for a tolling agreement. As I have just said, this is incorrect as a matter of fact.

Also, as any experienced civil litigator would immediately understand, to turn down a request for a tolling agreement from a government agency would virtually assure a lawsuit. Attorneys do not normally ask for tolling agreements, unless they are prepared to bring suit.

In this matter, the likelihood that the President and the First Lady would turn down a request by the RTC for a tolling agreement -- with the attendant public relations and political consequences of such a turndown -- was, in my view, zero.

Mr. Altman said that the RTC investigation was headed by Jack Ryan, the RTC's Deputy Chief Executive Officer, and Ellen Kulka, the RTC's General Counsel. He told us that he had confidence in them and would be inclined to rely on their recommendations. He said that they had both recently come from the Office of Thrift Supervision (OTS). I said that I had heard of Ms. Kulka when she worked for the OTS and that she was one of a group of tough OTS litigators.

Mr. Altman then turned to a subject that he had not previously identified as a topic for discussion. He said that he was considering recusing himself from the Madison Guaranty investigation. He said he had discussed this with Ms. Hanson and Secretary Bentsen, and they agreed it would be best.

Mr. Altman went on to say that he had received ethics advice to the effect that he was <u>not</u> legally or ethically required to recuse himself. This meant two things to me:

<u>first</u>, that Mr. Altman believed he could act impartially in the Madison Guaranty matter; and

<u>second</u>, that Mr. Altman and his ethics advisor believed that his acting in the matter would not

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raise an appearance of partiality within the meaning of the relevant ethical standards.

Notwithstanding this ethics advice, Mr. Altman said he was inclined to recuse himself. Mr. Altman added that he did not believe his recusal would have any effect on the RTC's decision-making process, since he expected to follow the recommendations of the RTC staff in any event.

I felt that what Mr. Altman had said raised an important policy issue for the Executive Branch. I was concerned that Mr. Altman's recusal might set a bad precedent for the Clinton and future Administrations.

My experience as a lawyer has taught me that if a judge has a legal or ethical reason for recusing himself or herself from a matter under adjudication, he or she should promptly do so. But if there is no legal or ethical reason for recusal -- and Mr. Altman had said that there was no such legal or ethical reason -- then the individual should do his or her sworn duty.

This principle was eloquently expressed by Justice Rehnquist in Laird v. Tatum, when, shortly after he was appointed to the Supreme Court, he was asked to recuse himself from a case. After finding he was not legally required to recuse himself, he wrote that the duty of "a federal judge . . . to sit when not disqualified . . . is equally as strong as the duty to not sit where disqualified."

I believe that the same principle applies to the Executive Branch and regulatory agencies. Public officials should not have the option of avoiding their responsibilities simply because they are difficult, or inconvenient, or because the officials find it personally or politically expedient to step aside.

When I testified last week before the House Banking Committee, I made this same point. Since then, the nonpartisan Office of Government Ethics issued a report which supports this position. The OGE wrote (on page 20):

> "It is important to note . . . that the impartiality provisions of the standards of conduct may not be relied upon by an employee as the basis for recusing himself from a matter because he simply does not wish to be involved or to exert the effort required. Under the standards of conduct, employees are expected to perform their duties

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fully unless there is a reason that their participation in a matter will result in an actual conflict, including an inability to act impartially, or will result in an appearance of conflict significantly detrimental to the public's legitimate perception of the fairness of the Governmental processes involved."

What this is saying, in simple language, is that a public official has a duty to do his or her duty. And that official has no right to retreat behind ethics rules -- when those rules do not apply -- to avoid doing his or her job.

The public policy issue raised by what Mr. Altman said regarding a possible recusal was not an academic one. It was then a matter of immediate concern to the Administration.

Just the day before this February 2 meeting, a nominee for the chair of the FDIC, Ricki Tigert, had been asked by certain Senators on the Banking Committee to agree to commit in advance to recuse herself on any issues connected to Madison or Whitewater. She was asked to do so for the ostensible reason that she knew the Clintons and was being nominated by the President.

Ms. Tigert had taken the position at the hearings that, if she were confirmed and asked to address Madison/Whitewater-related questions, she would consult the appropriate agency ethics officer and follow his or her advice. The inquiring Senators indicated that Ms. Tigert's response was not sufficient. They told her that if she would not agree to recuse herself in advance -- regardless of whether she was legally or ethically required to do so -- they would block her nomination.

At the time of the February 2 meeting, I and others in the White House believed it was important for the Executive Branch to resist efforts to force nominees to agree in advance to recuse themselves in situations where recusal was not legally or ethically required. We felt that those seeking Ms. Tigert's commitment to recuse herself were tampering with the agency adjudicative process.

So, when Mr. Altman said, without any advance notice, that he was inclined to remove himself from the RTC investigation, without a legal or ethical basis for doing so, I felt that he might create an unfortunate precedent for our Administration and future Administrations.

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As White House Counsel, I was concerned about what Mr. Altman was considering doing. But I did not tell him to remain in the matter.

Rather, this is what I said to him.

I said that if he was legally or ethically required to recuse himself, he should do so promptly. Obviously, if Mr. Altman had a disqualifying financial interest, or if he believed that he could not decide the matter impartially, or if his continuing to act created an appearance of favoritism within the meaning of the relevant ethics code -- any of which was a ground requiring recusal -- it would be necessary for him to remove himself.

But he had already told me he had received ethics advice that he did not have a legal or ethical obligation to recuse himself.

So I went on to say, that if recusal was not legally or ethically required, he should consider whether he should remove himself. I also said that, even if he ultimately determined to rely on his staff's recommendation (as he said he would), the fact that his staff knew there would be a review of its recommendations would help to insure the fairness and professionalism of the process. I was particularly concerned about the numerous leaks which seemed to accompany RTC actions.

I concluded by saying to Mr. Altman that, in any event, the decision on recusal was for him alone to make. He said he would give the matter further thought.

The only other discussion I can recall at the February 2 meeting is Ms. Williams asking if the private lawyers for the parties, including the Clintons' lawyers, would be briefed on the statute of limitations process. Ms. Hanson or perhaps Mr. Altman said that they would consider it.

On the way out of the meeting, I asked Ms. Hanson if Mr. Ryan's and Ms. Kulka's nominations had been submitted to the White House for clearance, since I could not recall having heard of their nominations. We were normally consulted before agency nominations were approved. Ms. Hanson told me they had in fact been submitted to the White House.

February 3, 1994. On February 3, Ms. Hanson faxed me a letter Mr. Altman had received from Congressman Leach urging Mr. Altman to consult an ethics officer concerning recusal. She left a message asking me to phone her. When I

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returned the call that evening, Ms. Hanson told me that Treasury was continuing to research the ethical issues involved in recusal.

I suggested to Ms. Hanson that whoever was doing the research might find it useful to speak to Beth Nolan. Ms. Nolan was an Associate White House Counsel on my staff who dealt with ethics issues. She is a former ethics Professor at George Washington Law School and is well known and respected for her expertise. Ms. Nolan later told me she did in fact have a discussion with a Treasury ethics official, Dennis Foreman.

I also suggested to Ms. Hanson that, to the extent there might ultimately be some concern at Treasury or the RTC about an appearance of lack of independence of the decision-makers on the Madison/Whitewater investigation, she might take a look at the civil jurisdiction in the recently-appointed Independent Counsel's charter and consider the advisability of the RTC referring these matters to the Independent Counsel.

On February 3, or shortly thereafter, I ran into Mr. Altman in the hallway of the West Wing of the White House. Mr. Altman told me in a brief conversation that he had given the issue more thought and probably would not recuse himself.

Later in February 1994. Later in February, either Mr. Eggleston or Ms. Hanson told me that Mr. Altman would leave the RTC at the end of March when his term expired and that he either could not or would not seek renewal of his appointment. I also believe that Mr. Altman told me later in February, in another brief conversation, that a Washington lawyer, Larry Simon, was likely to be nominated to head the RTC and he hoped Mr. Simon's nomination would be confirmed quickly.

There are also a number of internal White House conversations -- not conversations with the Treasury or the RTC or anyone outside the White House -- which I believe will help the Committee to understand that there was no attempt on our part to influence the outcome of the RTC's investigation.

In mid-February 1994, one of the lawyers on my staff told me that the RTC had retained Jay Stephens to conduct its investigation of Madison. Mr. Stephens, as you know, had expressed political opposition to the President in the past. When he resigned as U.S. Attorney for the District

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of Columbia in early 1993, he did so with a political blast at the Administration.

In response to this news, I shook my head in dismay and disbelief. I said that the appointment of Mr. Stephens was ridiculous and unfair. I also said that there was nothing we should or would do about it.

Similarly, at an earlier date in February, after the February 2 meeting, I described to certain members of my staff my experience in representing a large respected law firm in a proceeding brought against that firm by the OTS. I said to members of my staff that I believed the OTS did not act fairly and professionally in that proceeding. I said the OTS effectively prevented the law firm from defending itself, by seizing all its assets at the outset.

This position critical of the OTS was one I had taken publicly in the past. After the litigation was completed, in a number of different forums, I debated the former General Counsel of the OTS about the propriety of that agency's conduct.

I said to members of my staff -- but not externally to the Treasury, or the RTC, or anyone else outside the White House -- that I wondered whether former OTS personnel such as Mr. Ryan and Ms. Kulka (neither of whom I ever met or knew personally) could act fairly and professionally in this matter. This feeling was heightened when I later learned they hired Mr. Stephens and his law firm to conduct their investigation.

But, as with Mr. Stephens, I believed there was nothing we should or would do about the appointments made by Mr. Altman. And today, Mr. Ryan, Ms. Kulka and Mr. Stephens are conducting the RTC civil investigation of the Madison/ Whitewater matter.

In one of the statements made at the start at this hearing, it was said "that the reason the White House urged Roger Altman to stay on the case was the fear that the RTC General Counsel who would take over the decision would be too 'tough' on the Clintons."

To the extent that statement was intended to refer to me, my answer is this:

> First, I did not urge Roger Altman to stay on the case. I do not believe it would have been improper if I had urged him to stay on. But I did

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not do so. I asked him only to consider whether he should remove himself if he had no legal or ethical obligation to do so. I said the decision was his to make. If I wish to urge someone to do something, I am usually not at a loss for words to do so; and

Second, the reason I requested Mr. Altman to consider the matter of recusal further was not a fear thatthe RTC General Counsel would be too tough. I would have made the same statement no matter who was general counsel of the RTC. I made it because of the principle I previously discussed -- that a public official has a duty to do his or her duty. I also made it because an Altman recusal would undermine our position on the Tigert nomination.

In this connection, to be fair to Ms. Kulka and Mr. Ryan, apart from the inexplicable hiring of Mr. Stephens, I have no reason now to question their fairness and professionalism. Their testimony before this Committee was impressive. And on March 30, 1994, they wrote what I consider to be a highly professional, independent, even courageous letter to Congressman Leach. In that letter they wrote:

> "Neither of us are political appointees. No pressure has been exerted by the Treasury, the White House, or any other source in the Executive Branch concerning the performance of our responsibilities with respect to Madison Guaranty or Whitewater since either of us joined the RTC."

The Meetings and Contacts Were Proper

The meetings and contacts I have described have given rise to considerable controversy. In my view, however, they were appropriate. I was acting to facilitate the proper functioning of the Executive Branch and to enable the White House to perform its official duties. I was acting in the pursuit of legitimate, public purposes.

First, with respect to the September 29 meeting, Ms. Hanson provided the White House with notice of a referral that she predicted -- quite correctly -- the White House would be required publicly to address in the near future.

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Treasury understood that neither the President nor the First Lady was a subject of the referral. They were potential witnesses. There was obviously a concern that a partial or inaccurate leak might lead the uninformed to believe that because the Clintons were mentioned -- or "named" -- in the referral, they were somehow implicated in some improper conduct.

In preparation for these hearings and those in the House, I have been questioned about whether I thought Treasury officials had provided the White House with so-called non-public information -- as if there were something illegitimate about an executive agency sharing non-public information with the White House.

The White House receives non-public information all the time. The real question is whether this information is being properly transmitted and properly used for an official purpose and not for private gain or other illegitimate purpose.

The White House is required to respond to numerous press inquiries that concern both the official acts and past private behavior of the President and First Family. It is important that the White House be in a position to disseminate accurate information to the public to ensure that spurious or inaccurate allegations concerning the President are dealt with promptly and appropriately. Otherwise, confidence in the President and the Presidency could be undermined without justification. The September 29 meeting furthered this public purpose.

There have been suggestions at this inquiry that assisting the White House to prepare itself to respond to press inquiries -- about an investigation in which the President is named only as a potential witness -- does not further a necessary and important public purpose.

It is illegitimate, the argument goes, because it bestows "special treatment" on the Chief Executive; it provides him with something not available to the man on the street. There is no "spin control" exception to the RTC's confidentiality rules for the President, the argument goes.

What these arguments overlook is the special problems the President faces and the special responsibilities he has, problems and responsibilities not faced or borne by the man on the street, or anyone else.

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Unlike the man on the street, the President is much more likely to be the subject of leaks. He is the focus of overwhelming media attention. He is the target of opponents who feel no hesitancy in misusing or distorting leaked information in an effort to discredit him. And, of course, he is required to continue to act, at the same time, at home and abroad, as the nation's Chief Executive Officer.

In its recent report, the OGE recognizes that "the question of whether Ms. Hanson's disclosure [of the criminal referral] served an official interest raises a unique issue about the nature of the office of the President."

It goes on to say that:

> "Matters that would be of only personal significance for other Executive Branch officials may take on official significance when the President of the United States is involved. White House staff has long been used in addressing press inquiries regarding essentially personal matters involving the President and First Lady."

And it concludes:

> "Since appropriated funds have been spent for these purposes from administration to administration without any legal objection of which we are aware, we are not in a position to question the validity of the assumption . . . that dealing with press inquiries regarding the President's and First Lady's personal lives, including any involvement they may have had with Madison, is a proper White House function . . . [W]e believe there is a reasonable basis to conclude that Ms. Hanson's disclosures were not made to further a private interest."

I would also commend to you an article in yesterday's Washington Post by Mr. Cutler, my successor, entitled "Heads-Up History."

Citing examples from the administrations of Harry Truman, Dwight Eisenhower, John Kennedy, Lyndon Johnson, Richard Nixon, Jimmy Carter and Ronald Reagan, he demonstrates how customary it has been for government agencies with law enforcement responsibilities to inform the White House whenever a criminal investigation is launched that involves high administration officials or the President himself.

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And one reason for this line of precedent is expressed as follows by Mr. Cutler:

> "The president is the heart and brain of the executive branch. Like a hospital patient undergoing tests, he is monitored by a host of journalists who watch his every move and bombard him with questions. An unanswered question can be a story in itself, especially when it contains a hint of possible scandal. Presidents simply cannot afford to be uninformed or taken off guard."

In sum, both history and the OGE report of this past week clearly support the position that to inform the White House that the President may be a witness in a criminal referral -- a referral almost certain to leak -- serves a legitimate, public purpose.

It is a proper White House function to help the President prepare himself to accurately and promptly respond to press inquiries, to defend himself against misinformation and disinformation.

Second, regarding the October 14 meeting, Treasury officials advised us of a press inquiry that they had already received and their plans for responding to it. By providing that information, the Treasury officials were assisting the White House in understanding the nature of the press' interest so that the White House could prepare itself to respond to further inquiries. This, as I have stated, is a necessary and important public purpose.

There have been suggestions that the limited information conveyed at the September 29 and October 14 meetings should not have been conveyed because it could have been put to an improper use. That is true of virtually all the information the White House receives on numerous matters. And it is true, of course, of information received from time-to-time by other branches of government.

The question is not whether the information is subject to possible misuse. The question is whether it was, in fact, misused. Did anyone in the White House violate his or her oath by using the information for a purpose other than to prepare the White House to respond to press inquiries. The answer to that question is no. There is not a shred of evidence that anyone in the White House misused this information, or used it for any improper purpose. That did not happen.

What did happen is that the criminal referrals proceeded on their normal course. They were not stopped, they were not

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changed, they were not in any way adversely affected. As of this time they have been referred to the Independent Counsel for whatever action he ultimately determines to be appropriate.

Finally, with regard to the February 2 meeting, the information regarding the statute of limitations process was no different from that already provided to a number of members of Congress. In any event, there was no information provided in the February 2 meeting related to RTC procedures that White House lawyers did not already know and would not have been obvious to any experienced litigator.

I have already explained the significant public policy concerns with Mr. Altman's statement that he was considering recusal. It was appropriate to ask Mr. Altman to consider carefully whether he should recuse himself in a case involving the President where Mr. Altman was neither ethically nor legally obligated to do so. In Mr. Altman's case, it was all the more important to urge careful deliberation since he -- and others, such as Ms. Tigert -- were being pressed by the President's political opponents to recuse themselves.

As I have stated, I believed then, and I believe now, that Executive Branch officials and agency heads should not remove themselves from sensitive matters simply because of political advantage or expediency or for their own personal convenience. They should do their duty.

Some will contend that the meetings I described should not have been held because they created an "appearance" of impropriety. I understand that the ethical rules require Government officials to avoid any action that creates the appearance that the law or ethical standards are being violated.

But these same rules require that "appearances" must be judged in accordance with what a reasonable person would believe knowing all the facts and circumstances. The "appearances" are not to be judged simply by whether the conduct could stir controversy or occasion criticism -- perhaps uninformed -- by political opponents or by some in the media.

Consideration of all the facts and circumstances of the contacts I described must include the purposes for these meetings, precisely what was said, and all the public policy issues raised.

I know that there are some who may have different views about the relative importance of the policy issues that were raised by these meetings. As you have heard, I feel very strongly that public servants must do their duty. They should not be able

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to walk away from their responsibilities, without a legal or ethical basis for doing so.

Others, I know, may feel less strongly about this policy. They may believe that there are other, more important considerations, including political ones.

I respect those different views. But let us be clear. We are talking about legitimate differences of opinion. We are not talking about differences in ethical standards or standards of propriety.

Thank you.

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Exhibit B

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STATEMENT OF BERNARD W. NUSSBAUM

BEFORE THE
SPECIAL COMMITTEE TO INVESTIGATE
WHITEWATER DEVELOPMENT CORPORATION
AND RELATED MATTERS
UNITED STATES SENATE

104TH CONGRESS, 1ST SESSION
August 9, 1995

Mr. Chairman, Senator Sarbanes, and Members of the Committee:

Introduction

I appreciate the opportunity to deliver this opening statement.

I should tell you at the outset, and I know this will not surprise you, since we have all met before, that I intend to respond, in detail, to the issues, and to the innuendoes, raised in this hearing room, during the past several weeks.

I intend to do so with facts and with a discussion of how a lawyer is obliged to act with respect to a client's confidences.

So let me begin.

As you know, I was Counsel to the President of the United States from January 20, 1993 until April 5, 1994.

Vincent Foster was my Deputy. He was a superb lawyer, an individual of great integrity, and a magnificent human being.

Vince was the co-senior partner of the little law firm we created in the White House -- the White House Counsel's Office. It is hard to imagine having a finer colleague. I miss him. So do so many others who knew him well.

This Committee is looking into "whether improper conduct occurred regarding the way in which White House officials handled documents in (Mr. Foster's) office following his death."

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I have an answer to that question. It is a categorical "No."

There was nothing improper in the way White House officials handled documents in Vince Foster's office following his death.

As this Committee has heard, there were differences of opinion with the Justice Department as to how a search of Foster's office for a suicide note, or similar such document, should be conducted.

That office contained numerous confidential files, as well as sensitive documents, such as briefing reports on potential Supreme Court nominees and other high administration officials.

Before any review by me of the documents in that office, Department of Justice officials wanted to read a part of each document.

They wanted to decide if a document was privileged or relevant to their search. That is perhaps understandable from their institutional point of view, which Philip Heymann defined here as "maintaining the credibility of federal law enforcement."

As White House Counsel, I was also concerned with maintaining the credibility of federal law enforcement.

But I was bound to act in accordance with my obligations as a lawyer. And I did not believe that doing so would undermine the credibility of federal law enforcement.

It was my ethical duty as a lawyer, and as White House Counsel, to protect a client's information and confidences and not to disclose them, without a prior review by me.

It was my duty to preserve the right of the White House -- of this President and future Presidents -- to assert executive privilege, attorney-client privilege and work-product privilege.

It was my duty to do nothing that could result in an inadvertent waiver of those privileges.

It was my duty to protect the confidentiality of other matters as well, including sensitive government documents in that office.

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These were solemn, professional obligations that I was sworn to uphold.

The fact that law enforcement agents wanted to see if there was a suicide note in Vince's office, before I could review the documents in that office, did not give me the right to ignore these obligations and throw open the door to that office.

It did not give me the right to permit others, including Justice Department officials, to read the documents in Foster's office, or even a part of them, without a prior review by me.

I believe that each of you -- and each of you, like the President, is a major public figure -- would want your counsel to respond in the same way to a request, by the Justice Department or anyone, to examine your confidential materials in your counsel's office.

You would not want the door to your counsel's office thrown open to even a first page examination of your confidential files, without a prior review by you, or your counsel.

You might waive whatever confidences and privileges you had, and you might cooperate fully with investigators. But, you would want your documents in your counsel's office reviewed first, before you would let anyone look at them.

And you would want any decision, to waive confidentiality and privilege respecting your documents, to be reached carefully and deliberately.

The President was entitled to at least the same protection, to at least the same right, regarding documents in his deputy counsel's office, after that lawyer -- Vince Foster -- died in July 1993.

And as I said, I did not believe, in July 1993, that my acting in accordance with my obligations as a lawyer would undermine the credibility of federal law enforcement.

I still do not believe it, after hearing Mr. Heymann's testimony before this Committee.

Mr. Heymann apparently believes that all lawyers -- other than Justice Department lawyers -- are "players" with a "significant stake in the matter." He believes they cannot, and indeed must not, be trusted to act as a referee when it comes to reviewing and producing documents.

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This notion is foreign to our system of civil and criminal justice. It is contrary to how our system functions.

All lawyers -- whether they are White House lawyers, private lawyers, or Justice Department lawyers -- are bound by the same ethical obligations. No one of us, stands on a higher pedestal, than the other. No one of us, is more, or less, of a player, with a stake, than the other. No one of us, is more, or less, deserving of trust than the other.

In our system of justice, tens of thousands of lawyers each day, act as referees -- under strict ethical rules -- when it comes to reviewing and producing documents. This is how our system functions. These lawyers are subject, of course, to that ultimate referee, our Judges.

Phil Heymann's view that, when it comes to the President's documents, the public will only trust and accept the word of a Justice Department lawyer -- and not a White House Counsel, or a private lawyer -- is not only disappointing; it is destructive. For it feeds the very cynicism -- it creates the very distrust -- that he claims to be combatting.

Phil Heymann is a good and decent and honest person. Here, in my judgment, he happens to be profoundly wrong.

And so, as I will describe later, while I sought to accommodate the legitimate needs of law enforcement, I fulfilled my professional obligations. As you will hear, I was also concerned about appearances.

Before I turn to the specific events regarding the handling of documents following Mr. Foster's death, I want to tell you about certain things that did <u>not</u> happen.

I did not, nor, to my knowledge, did anyone else in the White House, destroy, mishandle or misappropriate any document in Vincent Foster's office.

The documents in Vince Foster's office were preserved. They were preserved.

Every document sought by law enforcement authorities -- some asked for right after Vince's death -- and others months later when the Whitewater matter erupted in the press -- was turned over by the White House and by the President.

It has been suggested that the reason I transferred personal files to the First Family after Vince's death was

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because I, or others, had some deep concern with the Whitewater matter. This is false.

The Whitewater matter -- which subsequently became the focus of so much attention -- was not on our minds, or even in our consciousness, in July 1993. Whitewater had absolutely nothing to do with how documents were handled in the White House following Vince Foster's death.

And yet it is that matter, Whitewater, that has resulted in these hearings. I will return to this later.

Let me now describe, in some detail, those fateful days in July 1993.

Tuesday, July 20

I was in a Washington restaurant on the evening of July 20, 1993 with my wife and friends. That was the day the President announced the appointment of Louis Freeh as the new Director of the FBI. It was also the day that Judge Ruth Bader Ginsburg began her successful Senate confirmation hearings for the Supreme Court. Vince and I had been involved with both these appointments. We were proud of them.

So I was in a happy frame of mind that evening when the White House called me at the restaurant. When I was told that Vince had committed suicide, I was stunned and deeply distressed. I immediately went to the White House where I saw the President and a number of White House officials. As you have heard, we were all sick with grief.

The President left with Mack McLarty, the Chief of Staff, to comfort the Foster family. Because I was concerned that my staff not learn of Vince's death through media reports, I went to my office to phone them. As I walked to my office, it occurred to me that perhaps Vince left a note telling us why he had taken his life. I decided to go to his office -- which was next to mine -- to see if there was a suicide note.

When I reached the White House Counsel's suite, at around 10:45 p.m., I found the door open. Patsy Thomasson and Maggie Williams, two White House staff members, were in Vince's office. Maggie was sitting on Vince's sofa crying. Patsy, who was sitting behind Vince's desk, said they had just arrived. She told me she was looking for a suicide note.

Patsy and I checked the surfaces in Vince's office. We opened a drawer or two, looking for a note. No one looked through Vince's files. Patsy did not examine any individual

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files. Nor did I. We did not find a note. We spoke about Vince and what a tragedy this was. Each of us was quite emotional. The three of us then left the office.

Nothing was removed by any of us. We were there no more than 10 minutes.

It has been suggested that our brief look for a note that night of July 20 was some secret, mysterious act, to be hidden from others. The fact is that the next morning, on July 21, I told law enforcement officials that Patsy, Maggie and I were in Vince Foster's office the night before. I told them that Patsy and I had briefly looked for a suicide note and found nothing.

After leaving Vince's office on July 20, I remained in the Counsel's suite. I went next door to my own office. I made the phone calls, very difficult phone calls, to my staff to tell them of Vince's death. I was there for about an hour. When I left my office that night, I believe I locked the door of the suite, as was my habit when I was the last one leaving.

Wednesday, July 21

July 21 was a difficult and busy day. Many members of the White House staff visited the Counsel's office to express their sympathies, to talk about Vince. There was much for me to do that day.

When I arrived at the White House that morning, my staff was in shock. All were grieving. I learned that one of my secretaries had gone into Vince's office that morning to straighten it up. The secretary, who was distraught, felt Vince's office should look nice when people came to see it. I asked her not to go back into his office.

Vince's office itself did not have a lock on the door, but the Counsel's suite did. Initially, I did not think about securing his office in any special manner. It was not a crime scene. Vince did not die there. One does not typically seal the workplace of a person who commits suicide. No one, the night before, suggested to me that Vince's office should be sealed.

But, on the morning of July 21, after talking about the issue with two of my staff members, we called the Secret Service. We asked to have an agent stand outside of and control access to Vince's office. The Secret Service promptly complied with that request. That evening a lock was installed on the office door.

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That morning of July 21, I also attended a meeting in the White House with the Park Police. They told us about the discovery of Vince Foster's body and the scene of his death. They said they believed that Vince had committed suicide.

The President came to the Counsel's suite on July 21. He came to console the people who worked there. While the President was with us, I briefly entered Vince's office. I removed -- and showed the President -- an early 1950's photograph of Miss Mary's kindergarten class in Hope, Arkansas. That photo, which Vince cherished, showed a 5-year old Vince Foster and a 5-year old Bill Clinton. Nothing else was removed from Vince's office that day.

Later that afternoon, the President, Mack McLarty and I addressed the entire White House Staff to try to comfort them.

Midday, members of the Park Police contacted me. They asked to review the contents of Mr. Foster's office to see if there was a suicide note, an extortion note, or some other similar document. They also asked to interview me and my staff.

I thought that there might be multiple requests for information, so I called Mr. Heymann, the Deputy Attorney General, and asked if the Justice Department would agree to coordinate the investigations of Foster's death. He said it would do so.

In the late afternoon, I met with representatives of the Park Police, the Department of Justice and others. We agreed that the interviews of my staff members -- many of whom were still shaken -- would be held the next morning.

We also agreed, after some discussion, that a search of Vince's office would take place the next day, to search more thoroughly for a suicide note, or similar such document.

I will return shortly to this meeting with the Justice Department on July 21.

Thursday, July 22

The next day, on July 22, the Park Police interviews of staff members took place as scheduled. The search of Vince's office began in the early afternoon.

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How the Search of Foster's office was Conducted. Prior to the search of Mr. Foster's office, I gave a good deal of thought about how it should be done.

Vince's office was the office of a senior Executive Branch lawyer. It contained numerous confidential and privileged files. It had extremely sensitive documents, such as briefing books on Supreme Court nominees, and reports on other high administration officials. I also believed that there might be national security information in the office.

As a lawyer, and as a former Justice Department prosecutor, I understood and respected the desire of law enforcement officials to examine the office, promptly. I understood their need to see if there was a suicide note, or some other such document that might help explain Vince Foster's death.

It is important to understand what we were being asked to do on July 22 -- to understand what the search was for, and what it was not for.

The search was for a suicide note, an extortion note, or some similar document which reflected depression or acute mental anguish. That is the request law enforcement officials made of me.

They did not ask to read every piece of paper in Foster's office -- every official White House record there, every personal file there -- to see if there was any indication of concern about any matter Vince had been working on.

I was not faced with a request for some general excursion through documents to determine Vince's state of mind about the matters he was working on.

But, even as to the limited request made of me on July 22, it was my duty as a lawyer, and as White House Counsel, to protect client confidences, including highly sensitive government documents in that office. It was my duty to preserve the ability of the White House to assert executive, attorney-client and work-product privileges.

This was a duty that I could not ignore. This was my professional obligation, under the Code of Professional Responsibility and the Model Rules of Professional Conduct, which, in one form or another, govern the conduct of all lawyers, and protect the confidences and secrets of all clients.

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Before deciding on how to balance the competing interests I was facing, I spoke with other attorneys in the White House on the morning of July 22. I talked to a number of people about this issue, as to how the search for a suicide note should be conducted.

But I did not speak to the President or the First Lady about this matter. Nor did Susan Thomases, or anyone else, convey a message to me, from either of them. Susan Thomases did not discuss the First Lady's views with me.

I assumed from the outset of this tragedy that the First Lady -- who is a very good lawyer -- like every other good lawyer in, or out, of the White House -- would believe that permitting unfettered access to a lawyer's office is not proper. And, while I have no memory of it, it is likely I said that to Steve Neuwirth, a member of my staff.

I was urged by one senior White House official, Jack Quinn, the Vice President's Chief of Staff, who is an able and experienced Washington lawyer, not to permit law enforcement agents to enter Vince Foster's office at all.

Jack was not concerned about particular documents or files. We never had a discussion about any sensitive matter. He was concerned about setting an unfortunate precedent for the future and the institutional need of the White House to preserve confidentiality -- concerns I shared. He suggested I should inventory the office and create a log of privileged documents.

I also talked to Bill Burton, who is an able Arkansas and Texas lawyer. He was Mack McLarty's principal assistant. Burton leaned in the same direction as Quinn.

However, if I had agreed with their otherwise sensible and conservative counsel, it would have meant that law enforcement agents could not have entered the Foster office for many days. It would have taken a long time to do an inventory and a log of privileged documents.

Such a delay would have displeased the law enforcement agents. It would have angered and frustrated them. I believed it was not fair to those officials to keep them out when all they were asking was to conduct a prompt search for a suicide note.

I also did not think it was politically wise to keep them out. Barring the door to Vince's office did not make sense from a public perception point of view.

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You see, I was concerned about appearances. If I had not been concerned, I would have followed the advice of my fellow attorneys and denied everyone access to Vince Foster's office. That is the way we likely would have acted in private practice. But, I understood well that we were representing a public figure, the President.

I decided I was <u>not</u> going to keep law enforcement people out of Vince's office.

I chose a middle ground.

I chose a procedure that balanced and accommodated the interests of confidentiality and the law enforcement interests.

I chose a procedure that provided the agents with immediate access to Mr. Foster's office, avoiding, I hoped, unnecessary conflict with the agents and unfortunate appearances.

This is the procedure I followed; this is what we did on July 22:

> I entered Mr. Foster's office together with the law enforcement officials; no one sat in a hallway; the agents were with me, at all times, during the search in Vince's office;
>
> As the agents watched, I personally pulled out each of the files in the office;
>
> I briefly reviewed the files; as I was doing so, I gave the agents a general description of the documents; and
>
> I checked to see if there was a suicide note, extortion note, or other similar document in those files -- which is what the search was all about.

I also accepted requests from the agents to read, for themselves, any document I was describing. As I went through the files in Vince Foster's office, the agents did ask to see and read certain documents. I set those documents aside.

Subsequently, after we reviewed them, every document the agents asked for was, within a matter of days, given to the law enforcement officials.

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The procedure I used provided law enforcement with prompt access to Vince's office. At the same time, it protected confidentiality and preserved the right to claim privilege. But we never claimed privilege. I repeat, we never claimed privilege. Every document the investigative authorities asked for was given to them.

* * *

Let me turn back to my meeting with Department of Justice officials on July 21.

I am aware that some law enforcement officials have said that on July 21 we reached an agreement. They say we agreed that they would be able to read at least a portion of each document in Vince's office, to determine what was privileged and relevant. Phil Heymann also believes I owed him a call back on July 22 to discuss the position I was taking.

I had, and continue to have, a high regard for the Department of Justice officials involved in this matter, Phil Heymann, David Margolis and Roger Adams.

We were all trying, in good faith, to accommodate our respective institutional interests. We had legitimate differences of opinion -- differences that clearly remain to this day -- and difficult judgment calls to make. We discussed various options. I never tried to cut off discussion. Nor did I consciously duck Phil's desire to talk further with me.

One option we discussed, on July 21, was the possibility of allowing Justice Department lawyers to look at a portion of each document, to see if it was privileged. I said I would consider that option. I did not say I would agree to it.

I did consider it, very carefully. By the next day, however, I determined that this would create an unacceptable risk of disclosure of confidences and an equal risk of waiver of the privileges I was obligated to protect.

As for privileged matters, the law regarding waiver is both strict and uncertain. A party cannot selectively disclose portions of attorney-client privileged documents, without running a serious risk of forfeiting the right to keep other documents and communications on that subject matter privileged.

I could not take such a risk of waiver consistent with my obligation to preserve the right to assert privilege.

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If the Justice Department officials believe that we had reached an agreement after our July 21 meeting, then a misunderstanding and miscommunication occurred.

But I do not believe, nor, as you have heard, do my colleagues in the White House Counsel's office, who were present at those meetings, believe, that we reached any agreement on July 21. Or that we, in any way, misused the Department of Justice.

If anyone at the Justice Department felt, at the end of the day on July 22, that there was an inadequate review of documents in Mr. Foster's office, or that agreements were broken, or that more should be done, they could have, at any time, after July 22, asked for a further review. They could have asked for specific files, or for all the files. No one ever did so.

To me, at least, that inaction <u>then</u>, speaks louder than words <u>now</u>.

<u>Foster Personal Files</u>. Let me now return to the search on July 22.

During the search, I came across a substantial number of Mr. Foster's own personal files. These were placed in a separate pile.

I believed Vince's personal files no longer belonged in the White House Counsel's office. They were not government records; they were his personal records. If there were to be any requests to examine those documents, they should be directed to the family's personal lawyers.

I said that, in so many words, to the law enforcement officials. They agreed to my transfer of the personal files to the Foster family lawyer, who was there during the search. I made the transfer right on the spot.

Later those officials contacted the Foster family lawyer. They asked to see and read all the Foster personal documents.

As you have heard at this hearing, after the documents were first reviewed by the Foster family lawyer -- consistent with his professional obligations -- the officials were shown every one of the documents.

<u>Foster's Working Files</u>. The vast majority of files I reviewed during the office search on July 22 were Mr.

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Foster's working files -- matters that he was working on in his role as Deputy White House Counsel.

When the agents left, the search was over. I wanted to get on with the work of the office -- to reassign Foster's matters to other attorneys. As this Committee has heard, the Justice Department attorneys were aware that the Foster working files would be immediately distributed to other attorneys in the office. I began the process immediately.

Clinton Personal Files. During the office search on July 22, I saw a number of files that concerned personal matters of the Clintons. I identified them to the agents present. I said these were Clinton personal files -- I said they involved investments, taxes, other financial matters and the like. Included was a file on the Clintons' Whitewater real estate investment.

I knew that Vince had been assisting the First Family in completing financial disclosure statements, filing tax returns and creating a blind trust. A President and his family are officially required to perform these acts. As such, it is proper, and indeed traditional, for the White House Counsel's office to assist in this function.

Mr. Foster needed access to the Clinton personal files for these official purposes. They were, therefore, properly in the White House Counsel's office. But that did not make them any less personal files.

Even though the First Family has to file financial disclosure forms and similar documents -- and even though it must use its personal financial files as the basis for that disclosure -- it does not follow that every such file becomes a Presidential record. That would be a ludicrous result. Those files had nothing to with the transaction of government business. They remained personal files.

I knew that the work on the projects, for which the personal files were needed, had recently been completed. With Vince's death, and the work done, the reason for our office possessing these personal files was at an end.

Just as I believed that the Foster personal files should go to the Foster family lawyers, I believed the Clinton personal files belonged in the hands of the First Family, or their personal lawyers.

Shortly after the search of Vince's office was completed, I asked Maggie Williams, the First Lady's Chief of

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Staff, to help me transfer these personal files to the Clintons, and to their personal lawyers. I told Maggie that I thought the Clintons would probably want to send the files to Williams & Connally, a Washington law firm that was representing them personally. I said she should confirm that with them.

The Clinton personal files were sent to the White House residence on the evening of July 22. They were sent to the residence because it was late in the day, and we were leaving for the funeral in Arkansas early the next morning. While it would have been perfectly proper for them to do so, it is my understanding that neither the President, nor the First Lady examined those files while they were in the residence.

On Tuesday, July 27, after we returned from the funeral, they were delivered to Williams & Connally.

As this Committee has heard, the Justice Department attorneys understood that these personal files would be going to the President's outside attorneys.

It has been suggested that I transferred the Clinton personal files because of some deep concern that I, or others, had with Whitewater.

As I said earlier, that is false.

My decision to transfer the Clinton personal files, including the Whitewater file, had absolutely nothing to do with what has come to be called the Whitewater matter.

If you had asked me, on July 22, 1993, the day I transferred the file, what Whitewater was, I do not believe I could have told you. Questions about the Whitewater real estate investment had surfaced briefly in March 1992 during the Presidential campaign.

But, in July 1993, Whitewater was not on my screen, nor, as far as I know, was it a subject of discussion in the White House. It was not until months later that I learned there was an investigation involving the Whitewater matter.

Whitewater was also <u>not</u> mentioned in Vince's now-famous, torn-up writing, found in the bottom of his briefcase.

Vince did, in that writing, list a number of things that were bothering him. Whitewater was <u>not</u> one of them.

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Monday, July 26

On Friday, July 23, we flew to Arkansas with the President to attend Vince's funeral. I returned to the White House on July 26. During that period of time, Mr. Foster's office was locked.

Before we left for the funeral, I had asked Steve Neuwirth to pack up the remaining personal items in Vince's office, such as his photographs and wallhangings, and send them to the Foster family.

On Monday, July 26, Steve turned to this task. He started to fill a box with Foster personal items. He picked up Vince's briefcase and turned it over to place it in the box. Yellow scraps of paper fell out of the briefcase. As Steve collected the scraps, he noticed there was handwriting on them.

During the July 22 search, I had removed files from this briefcase. I had not noticed scraps of paper at the bottom of the case. Nor do I recall any conversation on that date referring to scraps at the bottom of the case, with Cliff Sloan or anyone else.

On July 26, as soon as the scraps were found, they were pieced together by Steve, in my office. We discovered a list in Vince's handwriting. It reflected issues that had been troubling Vince. As I said, Whitewater was not one of them. This list was given to the Park Police the next day, on July 27, after Mrs. Foster and the President were given a chance to review it.

I waited a day to turn the list over because I believed then, and I believe now, that it was common decency to allow Lisa Foster to see the writing before it was turned over. She saw it on the afternoon of July 27.

I also thought it appropriate that the President, who was out-of-town that day, have a chance to see it, if he wished, before it was turned over.

This one day delay had no impact on any investigation.

Conclusion

In essence, that is how the documents in Vince Foster's office were handled after his death.

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Nothing was destroyed. Everything was preserved. Everything that law enforcement officials asked for was turned over to them. Whitewater was not on my mind at the time of Vince's death. And, in attempting to accommodate my professional obligation to preserve a client's confidences, with legitimate law enforcement needs, I was acting as a lawyer must act.

Looking back, therefore, despite the hue and cry, despite the media frenzy, despite this hearing, if I had it to do over again, facing the same circumstances, I would do it essentially the same way.

Does this mean I would repeat every single step? That I acted perfectly in every respect? Of course not.

Certainly, on July 22, I wish I had looked more carefully into the bottom of the briefcase. I wish I had found the scraps of paper on that day. But that omission resulted in no harm. The note in the briefcase was discovered four days later, and turned over to law enforcement authorities.

I believe the fundamental decisions I made were correct: how to conduct a prompt search for a suicide note in a lawyer's office; how to handle files in that office.

I was required to make difficult judgments in a unique situation. I was required to balance differing interests in a sensible manner. I believe I did so.

I <u>do</u> look back on those days, in July 1993, with a profound sense of sadness and regret. That is because we lost Vince Foster.

But I do <u>not</u> look back with regret at the way we, in the White House Counsel's Office, conducted ourselves in those tragic days following his death, with the way we handled the documents in Vince's office.

Let me say now, that, in my view, the reason we are having this hearing on the handling of documents, has little to do with how we handled the documents in July 1993.

I believe it would have made no difference, for example, if during the search on July 22 I had shown the Justice Department attorneys a portion of each document.

It would have made no difference if we had found the note on July 22, instead of July 26.

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It would have made no difference if I had served law enforcement officials thirty cups of coffee, and spoke gently to them, in other than a New York accent, which, unfortunately, is the only accent I have.

We would still be having these hearings. We would still be sitting here today.

What prompted these hearings is something different.

It is the linkage -- the unfair linkage -- of two separate, disparate events.

The first event, involves my transfer, in July 1993, of personal files, including a Whitewater file, to the Clintons' personal attorney following Vince's death -- a transfer which was totally proper, and, indeed, known to Justice Department officials.

The second, separate event, involves the emergence, in the fall of 1993, of Whitewater investigations, and the resulting media frenzy.

Linking these two events is illogical, unwarranted and unfair. They are totally unrelated. What we did in July 1993, particularly the transferring of personal files, had absolutely nothing to do with what has become the Whitewater matter.

Yet, our actions, in July 1993, are being judged on the basis of that later event.

This linkage creates, for some, a so-called "appearance" of improper conduct. But unless, in July 1993, you could see into the future, unless you could foresee the unforeseeable, there was absolutely no way to avoid that appearance.

In any event, it is this false linkage which has resulted in these hearings -- not the way we handled the documents in July 1993.

This exercise in political hindsight and chronological inaccuracy is unfair. But the fact that life may turn out to be unfair does not justify shrinking from your responsibilities -- either in July 1993, or today.

You know, from the last time I appeared before this Committee, that I strongly believe public officials do not have the option of avoiding their responsibilities because they are difficult, or inconvenient, or may result in criticism.

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I have learned that this is a controversial notion. I have learned that, for many, the concern is not so much for duty or propriety -- but for how things appear, or, perhaps more accurately, how they can be made to appear.

This "appearance of impropriety" standard, which is so much in vogue, places the ultimate emphasis on how things look, or, again, more precisely, how they can be made to look -- not whether they are right or wrong.

Fear of appearing to do wrong, prevents too many from doing what is right. This is a prescription for weakness and paralysis.

That is not the way I choose to live.

I believe that no lawyer, no counsel -- let alone a Counsel to the President -- should shrink from his duty in order to protect his own image or standing.

A lawyer should not -- indeed, ethically he cannot -- turn his back on his client because the political or media heat will be turned up; because someone with an axe to grind, or newspapers to sell, may attempt to make proper conduct appear improper.

But what about political judgment? Isn't the President a political figure? Shouldn't the President's Counsel be concerned about the political impact -- the public relations impact -- the appearance -- of his advice and conduct?

Of course he must. Of course he must exercise political judgment. Of course he must be concerned with appearances and public perceptions.

And, as I said earlier, I too was concerned about appearances in July 1993.

But let me say something more fundamental. Let me say what I believed before I went to Washington, and what I still believe after leaving Washington.

When you are privileged to hold high public office, ultimately the best public relations, the best political judgment, requires adhering to the following principles:

-- do the right thing;

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-- realize that, at times, your actions will be misunderstood; that you will be involved in conflict; that you will get bad press;

-- acknowledge your mistakes when they occur, but if you acted correctly, defend yourself, defend yourself publicly, and defend those around you, in an open, honest and forthright manner;

-- be principled, consistent and strong;

-- and, most important, worry less about tomorrow's headlines, than about the judgment of history.

These tenets, these principles -- which we in the legal profession strive to attain when we are at our best -- are too often missing in public life. They need to be retrieved and revived.

And I believe that in the long term, even the intermediate term, they not only make for good government; they make for good politics.

What it comes down to is that the President of the United States is entitled to have a lawyer in the White House who will be and act unafraid.

Such a counsel will serve his client, and his country, far better than one who is overwhelmed by a concern for appearances, or protecting his own image.

That is the counsel I tried to be. That is why I look back without regrets.

Thank you.

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MICHELLE PETERSON

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UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

United States Court of Appeals
For the District of Columbia Circuit

Division for the Purpose of
Appointing Independent Counsels

FILED OCT 2 4 2001

Ethics in Government Act of 1978, As Amended

Special Division

UNDER SEAL

In re: Madison Guaranty Savings & Loan Association
(In re: Madison Guaranty Savings & Loan Association)

Division No. 94-1

COMMENTS OF MICHELLE PETERSON

Michelle Peterson, who served in the Office of the Counsel to the President during the Lewinsky investigation, respectfully submits these comments on the Final Report of the Independent Counsel in the above-captioned matter.

Appendix 3 to Volume III of the Report, which is entitled "White House Non-Compliance with Subpoenas for Electronically Maintained Documents," states:

> The practice of the White House Counsel's Office, and Peterson in particular, was to fail to disclose pertinent documents in a timely fashion, and when making productions, to put unrelated materials in those productions.

Id. at xii.

This statement is false, as we demonstrate below. Moreover, the issue of the White House's production of records has been the subject of a lengthy evidentiary hearing before Judge Royce Lamberth in the case of Alexander, et al. v. FBI, et al., Civil Nos. 96-2123 & 97-1288 (RCL). During those wide-ranging proceedings, the Office of Independent Counsel (OIC) made the same allegation against Ms. Peterson that is made in Appendix 3. Ms. Peterson testified in Alexander on two occasions, and she has been permitted to

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intervene for the limited purpose of participating in the findings of fact. Following over 25 days of hearings, the parties in Alexander submitted lengthy proposed findings of fact and conclusions of law on the allegations of misconduct in production of e-mails, and the matter is sub judice before Judge Lamberth.[1] The record in Alexander thoroughly refutes the Independent Counsel's (IC) allegation of misconduct by Ms. Peterson in particular and the White House Counsel's Office in general.

Under these circumstances, Ms. Peterson respectfully suggests:

1. Because the allegations against Ms. Peterson are part of a pending judicial proceeding, this Court should defer publication of Appendix 3 to Volume III -- or at least the portion dealing with Ms. Peterson -- until conclusion of the proceedings in Alexander, including any appeals from orders Judge Lamberth may enter on the issue of production of e-mails.

2. If the Court is not inclined to defer publication, it should delete the portions of the report that make accusations against Ms. Peterson -- i.e., Appendix 3 to Volume III, pp. xi-xiv.

3. At a minimum, Ms. Peterson requests that these comments be included with any publication of the Report that includes the references to her.

I. Ms. Peterson

Ms. Peterson has spent nearly her entire professional career in public service. She worked for several years at the District of Columbia Office of Labor Relations and

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[1] Although Alexander is a case arising under the Privacy Act, the issue of the White House's e-mail production has been joined in the context of plaintiffs' motion for sanctions. It was on this issue, rather than the merits of the Privacy Act claim, that Judge Lamberth held evidentiary hearings.

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attended law school at Georgetown University. After her graduation in 1991, she served as a law clerk for two years to the Honorable Thomas F. Hogan. Upon the completion of her clerkship, she joined Covington & Burling as an associate. After two years in private practice, she returned to work for the District of Columbia as an assistant to Charles F.C. Ruff during his service as Corporation Counsel. When Mr. Ruff became White House Counsel, Ms. Peterson accepted his invitation to become an Associate White House Counsel in February 1997. Following her departure from the White House Counsel's Office, Ms. Peterson joined the Federal Public Defender's Office for the District of Columbia, where she represents indigent defendants in the District Court. Throughout her career, Ms. Peterson has earned a reputation as a respected member of the Bar and a dedicated public servant. Mr. Ruff regarded her as a trusted member of his staff and "a woman of absolute integrity and honesty." Aug. 28 Tr. 96.[2]

II. The Mail2 Problem

The IC's allegations against Ms. Peterson and the White House Counsel's Office have their genesis in what is known as the "Mail2 Problem." In July 1994, the Executive Office of the President (EOP) put into operation an Automated Records Management System ("ARMS") to store and achieve electronic records, including e-mails. In 1996, the EOP introduced a new Lotus Notes e-mail system. Due to a coding error, external e-mail to Lotus Notes accounts handled by a server named "Mail2" were not

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[2] Following the convention in the IC's report, transcript citations are to transcripts of the evidentiary hearings in Alexander, all of which occurred in 2000. We assume that these transcripts are available as part of the IC's report since they are cited extensively in the portion of the report to which we have had access. If that assumption is wrong, we can furnish relevant portions of the transcript at the Court's request.

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received by or stored in ARMS. In June 1998, employees of a private contractor discovered this problem.[3]

A copy of a June 18, 1998 memorandum from the White House Office of Administration briefly describing the e-mail problem (the Apuzzo memo) was sent to Mr. Ruff. On June 19, 1998, Mark Lindsay, the General Counsel of the Office of Administration, briefed Mr. Ruff on the problem. Aug. 28 Tr. 34, 36; Sept. 22 Tr. 33, 39, 44. Mr. Ruff "came away with the understanding that there was a problem, that it was not clear what the scope was, and that it might have indeed affected the integrity of our earlier document production." Aug. 28 Tr. 59.

Ruff told Cheryl Mills, the Deputy White House Counsel, about his conversation with Lindsay and discussed with her the need to determine whether the Mail2 problem had affected prior document productions. Aug. 28 Tr. 81-82. Although Ruff appreciated that the problem may have affected other document productions, id. 83, the subpoenas from the OIC involving Monica Lewinsky, to which his office had recently responded, were "the most current and pre-eminent" concern to him at the time. Id. 82-83.

Ms. Mills recalled that Ruff informed her that "there was a problem with the e-mail, and certain e-mails may or may not have been captured with respect to the Lewinsky investigation; that OA was conducting a search." Sept. 1 Tr. 83. Her impression was that

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[3] In January 1998, Daniel A. Barry, a computer specialist in the White House Office of Administration, while conducting a search for ARMS records in response to a subpoena from the OIC, noticed that only the outbound part of an e-mail conversation between Ashley Raines (a White House employee) and Monica Lewinsky (then employed outside the White House) had been received by ARMS. Because ARMS already contained a substantial number of inbound e-mails from Ms. Lewinsky, Mr. Barry did not believe that this anomaly was systemic. Aug. 3 Tr. 68-72. In any event, Mr. Barry did not tell White House lawyers about the anomaly he had found, id. at 92, 100, 106-07, and the Counsel's Office did not learn of the problem until June 1998.

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the e-mail problem affected only the Lewinsky investigation. Id. 85. She "assumed that Mr. Lindsay would communicate with OA whatever steps needed to be taken" to ensure that any missing e-mails were located and brought to the Counsel's Office for review. Id. 79-80.

The Office of Administration located and printed out about 400 e-mails from Monica Lewinsky in the file of Ashley Raines. Aug. 2 Tr. 201-02. Lindsay took these documents to the White House Counsel's Office and left them with an administrative assistant. Aug. 23 Tr. 144; see also Sept. 1 Tr. 72. When the approximately 400 printed Lewinsky e-mails arrived at her office, Ms. Mills asked Ms. Peterson to conduct a comparison of those e-mails with the Lewinsky e-mails that had been produced in response to a subpoena from the OIC in order to determine whether there were any e-mails which had not been previously produced to the Independent Counsel. Aug. 28 Tr. 194-200; Sept. 1 Tr. 72-73; Aug. 28 Tr. 197. Ms. Peterson was selected for this assignment because she had handled the production of the Lewinsky documents to the IC and therefore had the most familiarity with them. Sept. 1 Tr. 73.

Peterson was not shown the memorandum that the Office of Administration had sent to Ruff describing the Mail2 problem, nor was she otherwise made aware of the technical problem that occasioned the comparison of Lewinsky e-mails. Aug. 28 Tr. 268. She surmised at the time "that there had been a problem with the way the search had been done for Monica Lewinsky and that as a result of that problem, we had not -- perhaps had not gotten [--] all of the documents that were responsive" from the e-mail accounts of people who worked in the Office of Administration. Id. 199.

Upon receipt of the documents from Mills, Peterson scanned their contents and realized that they were all e-mails between Lewinsky and Ashley Raines. Aug. 28 Tr.

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200. Accordingly, Peterson instructed her paralegals to compile a copy set of all e-mail to or from Ashley Raines that had been previously retrieved, Bates-numbered, and produced to the Independent Counsel. Peterson then compared the e-mails received from Mills with the copy set of documents reproduced by the paralegals. Upon comparison, Peterson concluded that each of the e-mails provided by Mills had previously been produced to the Independent Counsel. Aug. 28 Tr. 200-03.

When Peterson determined that nothing had been omitted from the production to the Independent Counsel, id. 203, she concluded that the problem Mills had described to her was "a nonissue." Id. 210. She then telephoned Mills and informed her that the e-mails Mills had given her were the same as the e-mails that had been produced. Id. 209-10; Sept. 1 Tr. 76. Mills passed this information along to Ruff, and in her mind, "that was the end of the matter." Sept. 1 Tr. 108. When Ruff was informed that a comparison was done between the e-mails that had not entered ARMS because of the Mail2 problem and the e-mails that had been produced to the Independent Counsel, and that the "comparison showed that the two packages were identical," he concluded that the problem "had not infected prior document production." Aug. 28 Tr. 85, 113. To Ruff, that was the end of the Mail2 problem. Id. 136.

In retrospect, it has become apparent that comparing the two sets of Raines-Lewinsky e-mails was not sufficient to reveal the extent of the Mail2 problem. However, there is no evidence that anyone in the White House Counsel's Office -- and least of all Ms. Peterson -- selected the e-mails against which to compare the e-mails that had been produced to the OIC or had a sufficient understanding of the technical problem in June 1998 to know that this comparison was inadequate. In hindsight, Ruff acknowledged that his

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understanding of the impact of the Mail2 problem upon prior document productions was "mistaken." Id. 123. To the extent that the White House Counsel's Office "failed to understand the true nature of this problem for any reason," he, as the head of that office, took responsibility for it. Id. He assured Judge Lamberth, however, that "if there had been any sense on my part or the part of any of the members of my staff that, in fact, there was a problem that persisted or that infected our prior productions, we would have done something about it." Id. 124. See also id. 135.

III. Peterson's Grand Jury Testimony

Peterson testified in the Alexander hearing on August 28, 2000. On September 5 and 12, 2000, Peterson appeared as a witness before the grand jury being conducted by the IC in the Eastern District of Virginia. During her testimony on September 5, Peterson was directed to two of the e-mails in the stack of materials she received from Mills that had minor differences with the corresponding e-mails that had been originally retrieved and produced. Specifically, one of the e-mails had a minor difference on the subject line (one was blank and the other said "no subject") and a slight difference in the time of the e-mail. The other e-mail appeared to contain a second page showing a list of "cc's" that was not included in the original production.

After her appearance in the grand jury, wherein this minor discrepancy was pointed out to her, Ms. Peterson submitted a declaration in Alexander supplementing her testimony and identifying this issue for the Court. Ms. Peterson explained that she had been shown these minor differences on the two e-mails during her grand jury appearance, but confirmed her earlier testimony that in June 1998 she did not notice any difference and believed the two groups of documents to be identical. In follow-up testimony in Alexander, Peterson acknowledged that these two minor differences existed, but confirmed again that,

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at the time she conducted the original review, she believed that the two sets of documents were identical. Nov. 2 Tr. 175-77.

IV. The Independent Counsel's Submission

In response to a wide-ranging examination by plaintiffs' counsel during her August 28, 2000 testimony in Alexander, Ms. Peterson stated "with respect to both Congress and the Independent Counsel, it was unfortunately not that uncommon that documents would turn up after we had made a production, and we would have to produce them and explain why they hadn't been found before." Aug. 28 Tr. 264. Ms. Peterson further testified that "[i]t was certainly my practice and it was certainly the policy and practice of Mr. Ruff who headed the office, as soon as anything was found that had not been produced, we were required to immediately produce it." Aug. 28 Tr. 265.

On October 5, 2000, the OIC submitted a letter to Judge Lamberth challenging this aspect of Ms. Peterson's testimony. Dredging up a dispute between the White House and the OIC some two years old and unrelated to the Mail2 matter, the OIC asserted that Ms. Peterson (a) testified falsely about her general practice of handling the production of belatedly-discovered documents, and (b) intentionally attempted to hide the existence of a memorandum prepared by John Hilley concerning Monica Lewinsky when she produced the document to the Independent Counsel in April 1998. These allegations are repeated in Appendix 3 to Volume III of the Final Report. However, the Hilley memorandum is the only example cited in Appendix 3 to support the assertion that it was the "practice" of the White House Counsel's Office, and Ms. Peterson in particular, to fail to disclose documents in a timely fashion and to attempt to obscure them when finally produced. It is nothing short of irresponsible to assert a "practice" on the basis of one

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incident. And as we demonstrate, that one incident was not misconduct but an innocent oversight.

As the subsequent testimony received by Judge Lamberth made clear, the IC's allegations are without merit.[4] The Hilley memorandum was discovered by the Office of Records Management following Ms. Peterson's production of documents related to Monica Lewinsky. Ms. Peterson testified that the Hilley memo was brought to her attention on March 30 or 31, 1998. Nov. 2 Tr. 118-19. She included it in another batch of documents that she produced to the OIC on April 8, 1998. Nov. 2 Tr. 123.

Ms. Peterson further testified that it was her general practice and the office's general practice to include an explicit reference in a cover letter when producing a belatedly-discovered document. Nov. 2 Tr. 139, 157. She candidly acknowledged that in the case of the Hilley memo she had made a mistake by neglecting to follow her usual practice of flagging the belatedly-produced document in her cover letter to the OIC. Nov. 2 Tr. 137; see also id. 114, 116, 151, 210. She explained that this oversight was not intentional but was due to inadvertence and the press of other work. Nov. 2 Tr. 137-40.[5] The Hilley memo was included in a stack of documents approximately six to eight inches high, which was a relatively small production. Nov. 2 Tr. 213. Although the Hilley memo was not at the top of

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[4] The OIC did not confront Ms. Peterson with its accusations on the Hilley memorandum during her grand jury testimony, and therefore gave her no opportunity to explain the incident in that forum.

[5] The April 8 production included a videotape of the President's private quarters. Ms. Peterson was in charge of the arrangements for creating this tape, which implicated both security and privacy concerns. Ms. Peterson testified that "com[ing] up with a proposal that we could live with at the White House that would satisfy what they needed at the Independent Counsel's Office" and "getting everyone on board with the decision" to make the tape occupied much of her time prior to April 8 and "sort of overtook the Hilley memo." Nov. 2 Tr. 211-12.

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the stack of documents, Ms. Peterson placed the Hilley memo at the beginning of the set of documents sourced on a production log to the Office of Records of Management (where the document had been located). Nov. 2 Tr. 137-39. The prominent placement of the document at the top of those sourced to the Office of Records Management corroborates her testimony that she intended to point it out to the OIC rather than hide it. Ms. Peterson testified unequivocally that she never intentionally buried documents in a large production in an attempt to conceal their significance. Nov. 2 Tr. 217.

The IC's assertion that Ms. Peterson produced this document to the inappropriate office of the IC also proved to be without merit. As Ms. Peterson explained, although subpoenas relating to the Lewinsky investigation issued from both Virginia and District of Columbia grand juries, at all relevant times there was an agreement between the White House and the OIC to produce all such documents to a single designated attorney. Nov. 2 Tr. 215-17. The OIC point of contact changed over time. Ms. Peterson produced the Hilley document to the attorney who was then designated by the Independent Counsel to receive documents from the White House. Id.

Accordingly, there is no evidence that Peterson testified falsely concerning her general practice, or the White House Counsel Office's general practice, concerning the production of belatedly-discovered documents, or that she deliberately intended or attempted to conceal the presence of the Hilley memorandum when she produced that document to the OIC in April 1998. The IC's reckless charge against Ms. Peterson has been thoroughly examined in the Alexander case, and it has been proven to be false. This Court should not

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give further credence to the charge by publishing that portion of the IC's report while the matter is still pending before Judge Lamberth.

Respectfully submitted,



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UNITED STATES COURT OF APPEALS
FOR DISTRICT OF COLUMBIA CIRCUIT
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United States Court of Appeals
For the District of Columbia Circuit

FILED MAY 25 2001

Special Division

May 22, 2001

Mr. Mark J. Langer
Clerk of Court
United States Court of Appeals
for the District of Columbia Circuit
Washington, D.C. 20001-2866

Re: *In re: Madison Guaranty Savings & Loan Association (In re: Madison Guaranty Savings & Loan Association)*, Division for the Purpose of Appointing Independent Counsels No. 94-1 (Final Report from Independent Counsel Robert Ray)

Dear Mr. Langer:

I submit the following comment to the Final Report noted above, filed in *In re: Madison Guaranty Savings & Loan Association*, and sometimes referred to as the "Whitewater Report."

At Volume III Appendix 3, pages xxxviii-xxxix, the Final Report notes that Office of Independent Counsel (OIC) Deputy Jay Apperson wrote to me on September 25, 2000, asking about certain files listed in Steve Neuwirth's inventory. While it is perhaps true that no response to this letter was received by the OIC as of the filing of the Final Report, a substantial, multi-page response was ultimately sent. With the encouragement of my superiors, I attempted in good faith to respond as fully as possible to Mr. Apperson's request.

Based on subsequent conversations with the OIC, it appears that the Whitewater Report was filed before the end of the Clinton Administration. Its references to items received, or not received, as of the filing of the Final Report therefore may not include all of our office's responses. I therefore simply ask that the Final Report be supplemented. I believe the Final Report would be incomplete to the extent that it might suggest that I ignored the OIC's request in this regard.

Many thanks and best regards.

Sincerely,

Gregory Stuart Smith

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JIM GUY TUCKER

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RESPONSE OF

JIM GUY TUCKER

TO THE REPORT OF

THE INDEPENDENT COUNSEL

Submitted by:

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Jim Guy Tucker's Response to the Independent Counsel's Report

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> "How frightening it must be to have your own independent counsel and staff appointed, with nothing else to do but to investigate you until investigation is no longer worthwhile – with whether it is worthwhile not depending upon what such judgments usually hinge on, competing responsibilities. And to have that counsel and staff decide, with no basis for comparison, whether what you have done is bad enough, willful enough, and provable enough, to warrant an indictment."

Morrison v. Olson, 487 U.S.654, 732 (J. Scalia dissent 1988)

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"Where there is a will to condemn there is evidence"[1]

I. SUMMARY OF SIGNIFICANT MISSTATEMENTS AND OMISSIONS IN THE REPORT

The portions of the Office of the Independent Counsel ("OIC") Report ("Report") provided to Tucker contain multiple material omissions and misrepresentations of fact. In addition, the Report omits any discussion of the following that occurred while the OIC was under the direction of Independent Counsel ("IC") Kenneth Starr:

- The OIC's extensive and unethical elicitation and use of misleading, false and/or perjured testimony in the grand jury, in pleadings and in trial courts;
- The public disclosures of David Hale's relationship with and secret benefits received from right wing political operatives seeking to discredit Bill Clinton and those associated with him, including Jim Guy Tucker;
- The OIC's false and misleading denials of knowledge of the contacts and relationships between Hale and the American Spectator;
- Political and professional conflicts of interest between IC Starr and both President Clinton and Governor Tucker

As hereafter detailed, the Report does not disclose that:

- The OIC obtained the tax indictment by falsely representing to the grand jury both the applicable corporate tax law and that the United States had suffered a $3.5 million loss of corporate tax revenue on Tucker's sale of the Plantation cable system in January of 1988; the same misrepresentations were made in the Indictment, to the district court and have been repeated in the Report. Applying the law that was applicable at the time, and restructuring the transaction in the manner sought by the OIC, would actually result in a net tax refund to Tucker.[2]

- When asked by Tucker's counsel, in 1996, whether the OIC was aware of any contacts between David Hale and the American Spectator or other right wing groups, the OIC told Tucker and the court that it had "no independent knowledge" of contacts between Hale and the American Spectator or other right wing groups, that it could not "disclose information that it does not possess" on that subject, that it had "no duty to seek out from third parties information the defense deems useful for

[1] Old Chinese saying, from "*Wild Swans, Three Daughters of China*", Anchor Books, Doubleday, Nov. 1992, p. 324.

[2] Although the IRS has not completed the civil audit of the deemed sale by CMI, based on the IRS' agreement, contrary to the OIC's argument, that the Tax Reform Act of 1986 ("TRA") is applicable, the fair market value of $6.5 million and the availability of the loss carry forwards and tax credit carry forwards, the potential tax at the corporate level attributable to the sale could range from $0 to $64,000 depending on the amount of tax credits allowed against the built-in gains tax. Notwithstanding the *de minimis* corporate level tax, the audit adjustment will create tax benefits for Tucker arising from the liquidation of CMI which will exceed any corporate or personal tax increase.

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impeachment"; and had "no duty to undertake a fishing expedition" when in fact, the OIC had a duty to insure the integrity of the testimony of its key witness in allegations against Governor Tucker and the President of the United States. The OIC must have known that:

- While Hale was under the supervision of OIC employees, he had multiple meetings with agents of the The American Spectator's "Arkansas Project," and those agents provided Hale with cash, a free rental unit at Lake Catherine in Hot Springs, Arkansas, an automobile and insurance thereon, and payment of utility bills for Hale's residence in Shreveport, Louisiana; [3]
- The OIC moved Hale into the free rental unit provided by the American Spectator's agent in late 1994; Hale resided in the free rental unit during most of 1995, three to four nights a week, at least three weeks per month; agents of the OIC generally accompanied Hale at this location while Hale and the employee of the American Spectator met on Sundays.[4]
- Hale was provided office space in a Little Rock house rented by the American Spectator;[5]
- Hale traveled with and was provided transportation by employees of the American Spectator to Washington D.C. to meet with representatives of the American Spectator and Theodore Olson, a lawyer (and later board member) of the American Spectator[6] and to Pennsylvania to meet with Richard Scaife,[7] a right wing billionaire, who was funding the American Spectator; and that these meetings were attended by representatives of the American Spectator.

- Representatives of the American Spectator recruited Theodore Olson to represent Hale and Olson then provided Hale with over $140,000 of free legal services;[8]
- Prior to his testimony in the Tucker trial, and during the development of that testimony with the OIC, Hale was simultaneously meeting with and discussing his testimony with Olson and representatives of the American Spectator;
- Subsequent to Tucker's trial, the American Spectator, through the "Arkansas Project," directly paid other legal fees for Hale.
- On February 9, 1996, Tucker asked in a brief filed with the trial court, that the IC "should be required to make reasonable inquiry about Hale's affiliation with various right wing groups that may be attempting to influence his testimony." The Report omits to state whether any such inquiry was made prior to Tucker's trial, or at any time thereafter, to

[3] Affidavit of Caryn Mann, Exhibit 4.
[4] Affidavit of Caryn Mann, Exhibit 4.
[5] Redacted Report to the Office of Special Review, p. 83, Exhibit 6.
[6] Redacted Report to the Office of Special Review, pp. 27, 78, Exhibit 6.
[7] Affidavit of Caryn Mann, Exhibit 4.
[8] Redacted Report to the Office of Special Review pp. 28, 76, 79, 80, Exhibit 6.

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assure the integrity of the testimony of the witness making accusations against the President of the United States and the Governor of Arkansas, or whether it had any such knowledge.

- Olson stated that he began representation of Hale in 1995[9] but that Hale stated the representation began in 1993, and that Hale testified at the Tucker trial that he "didn't know Kenneth Starr at [the time he employed Olson]. Never heard of him"[10].
- How much total free legal services were provided by Hale's Arkansas legal counsel, Randy Coleman, or whether those services were paid for by a third party.
- The OIC denied providing any benefits to Hale in connection with a state criminal investigation of Hale on insurance fraud charges, when, in fact, agents of the OIC threatened the state prosecutor with obstruction of justice if he brought state charges against Hale;
- OIC attorneys violated ethical standards and DOJ guidelines by repeatedly making false or misleading statements in court documents, and eliciting or permitting sworn testimony from Hale which they knew or should have known was false and misleading, including:
    - When Hale was asked "Who pays Olson?" he responded: "I do," when, in fact, Hale was not paying Olson anything and was receiving over $140,000 in free legal services from Olson.[11]
    - When Hale was asked in a deposition about what business a company was in and who the owners of the company were, he falsely responded that the company was in the real estate business and was owned by others when, in fact, the company was controlled by Hale and was merely a front used by Hale to obtain money from his SBIC. The OIC attorney present did not object or correct the testimony of Hale.[12]
    - A federal judge sentencing Hale asked whether certain loans had benefited Hale personally. Hale said they had not. That answer was false, but the OIC attorneys who were present did not advise the Court that it was false or correct the statement.[13]
    - The OIC engaged in multiple solicitations of false testimony from Hale as to SBA regulations, eliciting false testimony that (i) Hale's SBIC could only make loans to "socially or economically disadvantaged" persons,[14] when the OIC and Hale knew that the SBA had determined in 1982 and 1983 that such a restriction was inapplicable to Hale's company; (ii) Hale's SBIC could not make loans to Tucker because Tucker was "an attorney for the

[9] Redacted Report to the Office of Special Review, p. 79, Exhibit 6; Transcript 4109-4111.
[10] Transcript 4117-4120, Exhibit 5.
[11] Transcript 4109.
[12] Transcript, 3813-3824.
[13] Transcript 4095-4100.
[14] Transcript 2350-58, 2418.

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company."[15] when, in fact, the OIC and Hale knew that the regulation only applied to attorneys on a retainer from the company,[16] which Tucker never was; (iii) Hale's SBIC could not make loans to a corporation in which he served as a director or officer when, in fact, such service was expressly permitted; (iv) that Tucker had prepared and tricked R.D. Randolph into signing a loan guarantee when, in fact, Hale and the OIC knew that the loan guarantee at issue had been prepared by Hale's secretary on an electronic form kept in Hale's office.

- In a pre-trial written response the OIC told the court "Tucker's assertion that the $56,000 [of payments to Hale by the OIC] was paid 'in cash' is a baseless, inflammatory misrepresentation of the record and untrue." The OIC never corrected this for the court. However, on cross-examination at trial, Hale admitted that the OIC had paid him $64,000 in cash.[17]
- The Report omits any record of the actual and apparent conflicts of interest between Independent Counsel ("IC") Starr and President Clinton and Tucker, including Starr's prior representation of the Republican National Committee, his alliance with persons representing Paula Jones against Clinton, his continued representation while serving as IC of tobacco companies who opposed policies of the Tucker Administration in Arkansas and the Clinton Administration, his representation while IC of clients before agencies of the United States, or that, while serving as IC, Starr accepted a job funded by Richard Scaife, who had been funding the "Arkansas Project" and its subsidies to Hale.

II. RESPONSE TO THE OIC'S STATEMENTS, CONCLUSIONS AND OMISSIONS REGARDING THE JUNE 1995 INDICTMENT ("TAX INDICTMENT")

SUMMARY:

Independent Counsel Starr made material and gross misrepresentations to the grand jury and the courts in obtaining and prosecuting this indictment. The evidence of the OIC's misrepresentations both as to applicable law and as to tax loss to the United States is now irrefutable. The Report should be amended to address why and how the misrepresentation occurred and when the OIC was first aware of the fact that the United States Internal Revenue Service and the United States Tax Court considered the Tax Reform Act of 1986 ("TRA") to be applicable to corporations such as CMI, which elected 'S' status prior to January 1, 1987, as evidenced by:

- IRS Announcement 86-126 of December 22, 1986, which predated Tucker's purchase of the assets in question.

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[15] Transcript 3073, 3077.
[16] Transcript 2370; 107 CFR § 107.3(a)(4).
[17] Transcript 3791, 3800.

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- The IRS July 28 1987 IRS Private Letter Ruling 8743046, which predated the alleged conspiracy.
- The IRS Private Letter Rulings 9011042 dated December 20, 1989; and 9206011, dated November 4, 1991, which predate the indictment and the tax audit.
- Congress' enactment of Section 1374(d)(8) as part of the Technical and Miscellaneous Revenue Act of 1988 ("TAMRA") addressing and codifying the position of the IRS in Announcement 86-128, which was given retroactive effect and predates the due date of the tax returns for 1988, the indictment and tax audit.
- The Treasury Department's issuance of proposed and final regulations under Section 1374 described in Announcement 86-128 on December 8, 1992 and December 27, 1994, respectively, which specifically contain an example of the application of the TRA in a merger with a pre-87 S corporation and predate the indictment.
- The position articulated by the Commissioner of the IRS and the decision of the United States Tax Court in *Argo Sales Company, Inc. v Commissioner,* 105 T.C. 86 (dated August 2, 1995).
- The admission by an agent of the OIC, Ms. Whitfield, that prior to the sentencing hearing in Mr. Tucker's case, she was told by an IRS official in the national office of the IRS that issued Announcement 86-126 that the IRS enforcement position is that the TRA had always been interpreted to apply to pre 1987 'S' corporations.

A. In obtaining an indictment of Tucker, the Office of Independent Counsel Starr falsely represented to the grand jury both the applicable corporate tax law and that the United States had suffered a $3.5 million loss of corporate tax revenue on Tucker's sale of the Plantation cable system in January of 1988; the same misrepresentations were made in the Indictment, to the District Court, and are repeated in the Report.

The June 1995 indictment of Tucker alleged that Tucker's rescission of a merger agreement based on stock fraud against him was, in fact, a scheme motivated by Tucker's efforts to avoid $3.5 million of corporate income tax on the sale of a cable TV system.[18] The OIC repeatedly refused to disclose which tax it alleged was applicable or how it calculated the alleged loss. It was only after Tucker's 1998 plea that the OIC revealed that the basis for its calculation of the alleged tax loss in the grand jury and in the courts was Section 1374 of the Internal Revenue Code ("old Section 1374"), as it existed prior to the Tax Reform Act of 1986, ("TRA"). The OIC charged that old Section 1374, "is the tax law which created the tax liability which the Defendants sought to avoid by their fraud."[19] In the Report,[20] before the grand

[18] Prior to Tucker's 1998 plea, the OIC had repeatedly refused to disclose which tax law it alleged to be applicable or how it calculated the alleged loss.

[19] *US v Tucker*, 217 F.3d 960, 966 (8th Cir. 2000)(quoting the OIC). The Report makes references to a tax loss arising from a "stepped up basis" obtained in the bankruptcy. However, despite an invitation from the 8th Circuit to present a loss calculation on this theory, the OIC never did so either to the Court or the IRS. As the 8th Circuit noted, "the (OIC) has never asserted this theory of tax loss, so its simplicity may be more apparent than real... [and] Tucker should have an opportunity to challenge this theory with a full tax analysis on a proper record". (Emphasis supplied). The reason the "simplicity' is only "apparent" and not real arises from the OIC's refusal

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jury, in the indictment and in arguments before the District Court and the 8th Circuit, the OIC stated that the corporate tax loss to the U.S. was $3,562,257.

Those statements and the statements in the Report as to the corporate tax loss and the applicable law were, and are, demonstrably false.

The OIC committed, at the least, gross legal error, in making these misrepresentations to the grand jury and to the courts. Even if it is assumed that the OIC made the misrepresentations in good faith, (having somehow overlooked the applicable IRS Announcements, private letter rulings on point, enactment of §1374(d)(8) by TAMRA in 1988 and the positions and example in the proposed regulations issued in 1992 which were finalized unchanged in 1994), upon learning of the opposing opinions of the United States on these matters, the OIC had an obligation to disclose to the District Court and in the Report, that the legal theory of law and loss they asserted was in error. The OIC's repeated refusal to disclose their mistake of law, which they asserted as the motive for the conspiracy and the basis for their calculation of the alleged loss to the government, raises issues of not just bad faith but an active cover up of prosecutorial misconduct.

The OIC should be required to disclose in the Report: (1) Whether they performed any search of IRS private letter rulings or tax court decisions regarding the application of the TRA to pre- 1987 'S' corporations prior to seeking the June 1995 tax indictment from the grand jury; and, specifically when they first learned of the IRS interpretations set forth in Announcement 86-126, the July 1987 private letter ruling, the subsequent private letter rulings, enactment of § 1374(d)(8) by TAMRA in 1988 and the positions and on point example in the proposed regulations issued in 1992 which were finalized unchanged in 1994 by the IRS and the U.S. Tax Court in the 1995 *Argo* decision, all of which specifically held the 1986 TRA to govern transactions involving pre-1987 'S' corporations such as CMI; (2) Why the OIC did not disclose that agent Whitfield had been advised by the national office of the IRS, that drafted Announcement 86-126, that the IRS enforcement position had never been that represented by the OIC; (3) whether the OIC concealed the fact of this legal error from the court and Tucker to avoid its obligation to provide exculpatory evidence to Tucker prior to his trial date or sentencing hearing.[21]

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to acknowledge disclose, or discuss, the fact that, in addition to the $1.6 million tax basis in PCSC, Tucker had an independent basis in CMI arising from his $6.0 million cash purchase of PCSC and a related promissory note, and the subsequent contribution to CMI. Under the rescission, that $6 million of basis became Tucker's basis in assets. Without the rescission, Tucker could have had the same tax benefit by merely liquidating CMI, which also eliminates any net tax impact of the sale.

[20] Vol. I, App. 5, page Lxix.

[21] Because the OIC's case was based on a conspiracy to impede the IRS in the determination and collection of a corporate tax under "old Section 1374" tax law, rulings by the IRS and the Tax Court that the TRA (rather than old Section 1374) was applicable to pre 1987 'S' corporations were indisputably material and exculpatory. This is especially true in view of the OIC's refusal to disclose which tax law was alleged to be the object of the conspiracy.

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B. Why the misrepresentations and the continued misrepresentations by the OIC are important:

1. The truthfulness of Hale's allegation that Tucker committed tax fraud was central to the credibility of Hale's allegations against President Clinton.

The Report states that its original source of information on the alleged tax fraud was David Hale. The veracity of this allegation by Hale was central to the OIC sponsoring Hale's allegations against President Clinton. As the Report puts it,

> "One test of the veracity of a corroborating witness is the witness' ability (or inability) to provide a prosecuting office with leads to criminal conduct that is other wise unknown. Hale's disclosure of the fraudulent bankruptcy and tax fraud was a classic example of such a test... If the facts were as Hale portrayed them to be that would be a powerful confirmation of his inherent credibility."[22]

If in fact Hale was wrong, and the rescission and bankruptcy arose from a legitimate business purpose,[23] rather than an effort to avoid millions in corporate tax, then by the OIC's own admission, Hale's credibility would be suspect in other charges against the President and Tucker. Someone in the OIC's office made the decision not to research, or to ignore, the law which would have demonstrated the falsity of Hale's tax crime allegation.

The premise of the indictment is that Tucker and Marks, aided by Haley, a senior and experienced independent tax lawyer, were seeking to impede the determination and collection of a $3.5 million corporate tax on the sale of Plantation. Had the OIC used the correct law, and the provisions of that law in calculating the tax, the motive for the alleged conspiracy would have vanished and the OIC's ability to convince the grand jury that a crime had occurred would have vanished as well.

2. The conduct of the OIC in presenting a demonstrably erroneous theory of applicable tax law and actual tax loss suggest the possibility of serious prosecutorial and professional misconduct.

The Report attempts a cover up of this entire issue. Without an examination of the questions raised in this Response, the Congress and the Special Panel will have no answer to what caused a legal error of great magnitude that was wrongly used as the foundation for an indictment and prosecution. The inherent dangers of an independent counsel operating outside the scope of the institutional checks of the Department of Justice and, in this instance, the Internal Revenue Service, are well known. *See Morrison v. Olson*, 487 U.S.654, 732 (J. Scalia dissent 1988). Tucker,

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[22] Report p. 147.

[23] Marks fraud in not disclosing the Starks' stock sale contract to Tucker or Meredith and the resultant claim of Starks for stock in CMI.

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Haley and Marks were charged with a tax fraud conspiracy based on a tax theory and tax loss calculation that is demonstrably wrong. Under the federal sentencing guidelines, the size of the intended tax avoidance determines the mandatory minimum prison sentence. Thus, the size of the loss alleged by the OIC was used not only to influence the grand jury as to the likelihood of the illegal conspiracy, but, critically, to dramatically enhance the bargaining power of the prosecutor in obtaining a guilty plea. In this instance, a recklessly or knowingly erroneous claim of a huge tax loss, and the consequential threat of a lengthy mandatory prison term, was used by the OIC in an indictment against Tucker who was a recent liver transplant patient, and a potentially highly credible witness against the President.

If the presentation of incorrect law and facts were a simple error, it would seem important to know how those errors occurred and who was responsible for them. It also would seem important to know why the OIC did not make immediate disclosure as soon as it did learn of the misrepresentations.

No citizen should be subjected to the terror instilled by an indictment based on such huge legal and mathematical errors.

C. The proof of the OIC's misrepresentation in this matter is incontrovertible:

1. The IRS has now determined that the OIC was wrong as to the applicable law and tax, and that, even if the transaction were "restructured" to reflect the OIC's theory of the conspiracy, little or no corporate tax loss occurred.

Because this case was initiated by the OIC and not by the IRS or the tax division of the Justice Department, the conventional review process of those agencies was not used in the analysis of the tax law or calculations used in the indictment. Instead, the legal staff of the OIC and an IRS agent assigned to the OIC, made the tax law decisions and calculations. When the IRS, over the objections of the OIC, was finally permitted to review the matter after Tucker's plea,[24] It agreed with Tucker that both the OIC legal theory and resulting tax consequences were wrong. The IRS has agreed with Tucker that (a) the TRA's built in gains tax, effective on January1, 1987, is the tax law applicable to a sale of the Plantation cable system by CMI and that (b) the net result of the OIC theory (treating as a sham the rescission and subsequent sale of the Plantation system as it actually occurred, and, instead, imputing a sale by Tucker's company, CMI) is that CMI would owe little or no corporate tax and that the net result would be a tax refund to Tucker. The statements in the Report that there was "more than $3.5 million of corporate tax owed" or that the US Government sustained a corporate tax loss of $3.5 million are false and should be stricken.[25]

[24] In October of 2000, when the OIC learned that the IRS agreed with Tucker, it sought to halt any further consideration by the IRS. After a complaint by Tucker to the District Court and a hearing, the IRS was allowed to resume its consideration.

[25] *See,* for example, Vol. I, Appendix 5, p. lxix.

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2. At all times, the OIC knew or should have known that the TRA of 1986 was applicable to the transaction.

The OIC knew or should have known when it sought the indictment, (and now must know) that the TRA of 1986 was always applicable to the merger of PCSC into CMI and to the sale of Plantation by CMI and that the Internal Revenue Service has always had that view. The evidence on this is incontrovertible:

First: The OIC must be charged with having knowledge of the official position of the United States whom it purported to represent on this issue. At least twice prior to the date of the alleged conspiracy, and at least five more times prior to the date of the indictment, the United States announced its position, which was at direct odds with the OIC's position. The OIC therefore knew, and the Report should reflect that in at least seven separate pre-indictment official statements by the agencies of the United States charged with interpreting and enforcing the tax laws announced official positions contrary to the representations of the OIC:

- The Treasury Department of the United States stated, in Announcement 86-126, on December 22, 1986 (prior to CMI's acquisition of the assets at issue and prior to alleged conspiracy, rescission and bankruptcy), that the TRA of 1986 would apply to companies that chose "S" status prior to January 1, 1987;
- The IRS confirmed that position by Private Letter Ruling 8743046 on July 28 1987 (prior to the alleged conspiracy, the rescission and bankruptcy);
- Congress' enactment of Section 1374(d)(8) as part of the Technical and Miscellaneous Revenue Act of 1988 ("TAMRA") addressing and codifying the position of the IRS in Announcement 86-128, which was given retroactive effect and predates the due date of the CMI 1988 tax return at issue, the tax audit, and the indictment.
- The IRS restated that position in two additional Private Letter Rulings in 1989 and 1991 (years prior to the tax indictment);
- The Treasury Department's issued proposed and final regulations under Section 1374 described in Announcement 86-128 on December 8, 1992 and December 27, 1994, respectively, which specifically contain an example of the application of the TRA in a merger with a pre-87 S corporation and predate the indictment.
- In the briefs and argument of the Commissioner of the IRS in the United States Tax Court in the *Argo* case (before the indictment).[26]

Second: The Report, cites an October 9, 1987 letter from a national accounting firm to Tucker as evidence that Tucker was conspiring to impede the imposition of the tax which existed prior to the creation of the "built in gains" by the TRA of 1986.[27] But

[26] *Op. Cit.* The decision of the United States Tax Court in that case, sustaining the Commissioner, was issued less than 60 days following the tax indictment.

[27] Report, Vol. I, App. 5, p. lxi

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the letter itself specifically cites the "built in gains" tax (created by the TRA) as the applicable tax.[28]

Third: Prior to Tucker's sentencing hearing, the OIC was told by an official in the national office of the IRS (which had issued Announcement 86-126), that, contrary to the representations made and being made by the OIC, the IRS had always taken the position that the TRA of 1986 was applicable to corporations electing 'S' status prior to January 1, 1987.[29] This information was concealed from Tucker and the Court until March 6, 2001.

D. The Report's comments on the applicable tax law continue a six-year effort to cover up the OIC's misrepresentation; the OIC should not be permitted to represent that its mistaken argument is the "view" of the United States, which has always taken an opposite position.

The OIC Report states that the "changes" in the tax law, which Tucker argued to be applicable, were "all subsequent to (Tucker's) tax scheme".[30] (emphasis supplied). The Report goes on to state, "All of the changes to the tax code on which Tucker relied, in the government's view, did not apply to his situation; they all applied only to corporations that chose "S" designations after December 31st, 1986. Since CMI chose that designation in May 1985, the changes to the code were simply irrelevant". (emphasis supplied).

The "change" referred to by the OIC was the "built in gains tax", a part of the TRA effective for tax years beginning after December 31, 1986. The TRA was signed into law on November 22, 1986, almost one year in advance of the "tax scheme". Prior to the passage of the TRA[31] the term "built in gains" tax did not exist. It is a term of art

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[28] The Report also misrepresents the content of the letter. The letter does not say that the gain will be $13 million. It states that the gain will be the difference between the basis of the Plantation assets on the date 80% of PCSC was acquired by CMI (for $6 million) and the fair market value of the Plantation system at the date of the merger which was on that same date. The letter suggests an appraisal be obtained to support the purchase price paid as being the fair market value ("FMV").

[29] Agent Whitfield of the OIC's office in meeting of March 6, 2001.

[30] Report, Vol. I, p. lxix. The Report states, on the same page, that Tucker argued in effect that "although he intended with his co-conspirators to defraud the US, if the new law applied to the relevant events he would have owed no actual tax." In fact, Tucker specifically told the District Court that he had no intent to violate the laws of the United States and had relied on advice of counsel and Tucker has always argued that the 1986 TRA applied to the Plantation assets and was so advised by counsel at the time of his purchase.

[31] The 8th Circuit Court of Appeals summarized the history of the TRA:

> A major purpose of the TRA was to impose a corporate-level gains tax on Subchapter C corporations that sell appreciated assets and liquidate. (Citing H.R. Conf Rep No. 99-841, at II-198-200, reprinted in 1986 U.S.C.C.A.N. 4075, 4286-88.) To close a potential loophole in the new regime, TRA amended Sec. 1374 to impose an equivalent corporate level tax on a subchapter C corporation that files a subchapter S election before selling appreciated assets and liquidating...TRA did not apply to corporations that had always been S corporations. (citing Pub. L. No. 99-514, Sec. 632(a),100 Stat. At 2276, codified at § 1374(c)(1). But this created another potential loophole—the use of an existing S corporation to acquire appreciated assets from a C corporation in a tax-free transaction and then sell them free of a corporate level income tax. This would avoid the new corporate level tax (the built in gains tax), because amended Sec. 1374 did not apply to existing 'S' corporations.

US v Tucker, 217 Fed 3d at 963. In short, the TRA accidentally created a situation that at least appeared to permit a continuation of the tax loophole it sought to close. Congress had adjourned. The IRS immediately

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applicable only to the taxability of "C" corporations for certain transactions (such as mergers into 'S' corporations) taking place after December 31, 1986. On December 22d 1986, six months before the CMI-PCSC merger, the Treasury Department announced the official position of the United States Government on this issue: that the built in gains tax of the TRA would be applied to 'S' corporations in existence on or prior to December 31st 1986.

Specifically, the IRS Announcement stated:

> To prevent the use of the corporate reorganization provisions of the Code to circumvent the built in gain tax, the regulations will provide that transferred basis property acquired by an S corporation from a C corporation or a former C corporation, such as transferred basis property acquired in a tax free merger of a C corporation into an S corporation, generally is subject to the built in gain tax notwithstanding that the transferee corporation always has been an S corporation. For purposes of Section 1374 of the Code as amended by the (TRA), the acquisition of such transferred basis property will be treated as a conversion to S corporation status as to that property. (Emphasis supplied).

Announcement 86-128, 1986-51 I.R.B. 22, December 22, 1986.

Taxpayers are entitled to rely upon such Announcements and Tucker did. In the face of the IRS and tax court rulings, it is misleading and false for the Report to characterize the unsubstantiated argument of the OIC, which they know to have been repudiated by the IRS and the Tax Court, as the "government's view" and to misrepresent the state of the law as having changed only "subsequent to Tucker's" alleged scheme.

E. Tucker knew that the "built in gains tax" of the TRA was the tax applicable to CMI's sale of the Plantation cable TV system and had been so advised by counsel prior to the date of the alleged conspiracy:

Tucker's tax counsel advised as early as May 25, 1987 and again on August 31, 1987 (prior to the date of the alleged conspiracy) that the TRA was the tax law applicable to CMI's sale of PCSC assets, and, specifically to the sale of the Plantation cable system by CMI.

For example, the August 31, 1987 memorandum by Tucker's Texas tax counsel stated that if CMI sold Plantation pursuant to the proposed offer by ACS, then,

> ...under Section 1374, it will be subject to corporate level tax on the excess of the value of the assets sold, determined at the time of the merger of (PCSC) into CMI over the basis of these assets in the hands of CMI. (citing 1986 TRA and Announcement 86-128)...(CMI) will argue that the

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recognized this loophole and, on December 22, 1986, under its rule making authority, announced that the built in gains tax would be applied to 'S' corporations that existed prior to December 31, 1986.

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> only built in gain subject to Section 1374 is the excess of that portion of the (purchase price for the PCSC stock) allocated to the Florida system over the corporate basis in the Florida system. Any remaining gain in the sale of the Florida system would be normal subchapter 'S' income not subject to Section 1374."[32]

F. The Calculation of the Built In Gain Tax by the IRS:

The OIC argued that the rescission (or failure[33]) of the CMI/PCSC merger and the sale of Plantation by Tucker should be disregarded as an effort to impede the IRS in determining and collecting corporate tax on the sale of Plantation; and that the IRS should then calculate the corporate tax as though CMI, having acquired the Plantation assets in its merger with PCSC, then sold Plantation directly to ACS in January of 1988. The Report omits any disclosure of the corporate tax calculation presented to the grand jury or that, because the OIC failed to present evidence in court to support its calculation of the tax, the 8th Circuit's reversed the district court's restitution order made in reliance on the OIC's representations.

The IRS is calculating the corporate tax on that imputed transaction. The calculation is done as follows:

> 1. The "Fair Market Value" ("FMV") of the asset sold (Plantation) was measured as of the date of the acquisition of Plantation by CMI (June 10,1987) through the merger of the 'C' corporation (PCSC) into the 'S' corporation (CMI). The purchase price for an asset is normally the governing rule in determining FMV. FMV is normally defined as the price a willing buyer will pay and at which a willing seller will sell in an arms length transaction, neither under compulsion to buy or sell.[34] A professional appraisal is frequently used[35], or required, by the IRS

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[32] Memorandum of Gardere & Wynne to Richard A. Williams (Tucker's law partner), August 31, 1987.

[33] See subsection F of this section re the defect in the merger vote.

[34] Seller's Vice President of Finance at the time of the sale, told the OIC in interviews that the Seller wanted out of the cable business because (a) PCSC was an "operating bankruptcy" during the early stages and that the stock of PCSC had no book value at the time of sale; that he signed an affidavit stating that the stock had no value or only nominal value at the time of sale and the consideration paid was attributable solely to the Note purchased from Meredith and that affidavit was accurate in his opinion; (b) the Seller had negative equity in PCS;. (c) PCS was a "pile of junk"; (d) the Seller had not been able to use the losses generated by PCSC until the Seller acquired 82% of PCSC; (e) the Seller flew the Buyers' to San Francisco after the purchase to celebrate the sale; (f) the seller was extremely pleased to sell PCSC at a small profit; and (g) the seller felt confident that the $6 million paid by Tucker was the best offer he could get. The legal counsel for the Seller stated that he remembered how pleased the Sellers' Chief Financial Officer was that a buyer had been found. OIC 302 interviews of William Straw, June 20 1994, December 20,1994, April 28, 1994.

[35] The October 1987 letter from Coopers Lybrand suggested such an appraisal in order to fix the amount of the built in gains tax and avoid the kind of second-guessing urged by the OIC.

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to determine FMV at the date of acquisition.[36] The acquisition date and the contract date are frequently different.[37]

2. The basis in the asset, was established by the prior tax records of the 'C' corporation, and was subtracted from the FMV of the asset on the date of acquisition by CMI through the merger.

3. Net operating loss carry forwards of the 'C' corporation on the date of acquisition were then subtracted from the built in gain.

4. The resulting "built in gain" was then subjected to tax at the 34% 'C' corporation tax rate then in effect.

5. PCSC's unused investment tax credits were then subtracted from or added to the result. This creates the final amount of the "corporate tax on built in gains" which was created in the TRA of 1986 and that the December 22, 1986 IRS Announcement 86-126 made applicable to CMI's sale of the Plantation assets acquired by CMI in its merger with PCSC.

The OIC told the grand jury and the court, and the indictment alleges, that the United States lost over $3.5 million of corporate tax on the sale of the Plantation cable system by Tucker after the rescission and the PCSC/LMS bankruptcy; and that the object and motive of the alleged conspiracy was to impede the IRS in determining and collecting that tax. In fact, the result of the IRS determination is that little or no corporate tax would have been owed on the Plantation sale.

The preliminary corporate tax calculation on the sale of the Plantation system has been done as follows:

Calculation of built-in gain and taxation of CMI on Plantation sale	
FMV of PCS Assets on Date of Merger (IRC 1374(d)(8)(B)(I))	$6,500,000
Less: Basis in PCS Assets	(1,213,214)
Net Unrealized Built-in Gain (IRC 1374(d)(1))	5,286,786
Less: NOL Carry forward from PCS 1120 (IRC 1374(b)(2))	(4,448,004)
Net Recognized Built-in Gain (IRC 1374(d)(2))	838,782
Corporate Built-in Gains Tax @ 34% (IRC 1374(b)(1))	285,186
Less: PCS Tax Credit Carry forwards (IRC 1374(b)(3))	(377,808)
Net Corporate Level Built-in Gains Tax	0

38

[36] As part of the determination of whether there was any tax loss in this case, Tucker did obtain such an appraisal from an appraiser with substantial experience in the cable television industry and who has testified as an expert for the IRS in tax matters. After its own review, the IRS orally agreed to accept the determination that the FMV of Plantation was $6.5 million on the closing date.

[37] For example, Tucker contracted his purchase in March 1987. The purchase closed in June 1987. It is the "closing date value," in June that governs.

[38] The final IRS Report has not yet been received and, therefore, the actual "Net Corporate Level Built-In Gains Tax" on the Plantation sale may increase above zero based upon the taxpayer's ability to offset all of the $285,186 tax by using the taxpayer's $377,808 in tax credit carry forwards. CMI and the IRS are currently reviewing whether there are limitations that prevent use of such credits to offset 100% of a tax liability. If the use is limited based on the most recent IRS position, approximately $64,000 of corporate level tax would be created; but, as hereafter set forth, because Tucker realizes a large tax loss on the dissolution of CMI as a result

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G. The Report repeatedly misstates Tucker's "Profit on the Sale of Plantation".

In the Report, the indictment and in presentations to the courts, the OIC repeatedly misrepresents Tucker's "profit" on the sale of Plantation by omitting the price of Tucker's purchase. Disregarding Tucker's actual $6.0 million cost and purchase price paid for the Meredith Note and stock in PCSC is misleading and ignores the economic reality of his "profit" on the sale of the PCSC asset.

In June 1987, Tucker personally borrowed $6 million from a bank[39] to purchase the Meredith Note and 82% of the stock of PCS. Tucker then contributed the stock to CMI and PCSC was immediately merged[40] into CMI. Utilizing the OIC conspiracy theory by disregarding the rescission and subsequent sale by Tucker, and treating the sale as having been by CMI, results in the creation of "basis" in CMI equal to the purchase price of the of the Note. The dissolution[41] of CMI then creates a net operating loss carry forward in an amount equal to Tucker's 50% of the $6 million paid for the assets. As has already been demonstrated, CMI had little or no corporate "profit" on the Plantation sale. Tucker would realize an increased gain on the sale of about $650,000 on his personal return.. However this gain is more than offset by Tucker's loss on the CMI dissolution. The result is that Tucker would have incurred no additional personal tax liability had CMI sold the property rather than Tucker going through the rescission process.

Tucker's personal return on the transaction, disregarding the rescission and bankruptcy, results in the following:[42]

Calculation of CMI Gain to Shareholders:	
Sales Price	11,750,000
Less: Basis in PCS Assets	(1,213,214)
Less: Closing Costs (Closing Statement)	(381,877)
Net Realized Gain on Sale	10,154,909
Net Recognized Gain on Sale	10,154,909
Calculation of Adjustment to JGT Form 1040:	JGT
50% of Net Recognized Gain Allocated to JGT	5,077,455
Less: Gain Reported by JGT on 1988 Form 1040, Sch D	(4,466,977)
Net Difference in Gain Reported	610,478
Times: Income Tax Rate for 1988 (IRC 1)	28%
Increase (Decrease) in Individual Liability (B)	170,934

of having purchased the Meredith Note and PCSC stock for $6.0 million, the end result of the restructured transaction sought by the OIC's conspiracy theory is that Tucker would receive a tax refund!

[39] Tucker's wife co-signed the note. Marks signed the note but Marks' wife did not. The note was further guaranteed by Tucker's corporation CMI into which Tucker had agreed to place his 50% of CCLP, another cable system, which had a total value in excess of $10 million at the time.

[40] It was contemplated that the Note would be contributed to CMI in the future.

[41] Had Tucker been simply trying to avoid the CMI corporate tax by the rescission, he could have merely dissolved CMI in 1988 and thereby offset his basis in CMI, as a loss on liquidation, against his profit on the sale of Plantation. In 1988, at the then applicable 28% tax rate, this would have produced a tax benefit of $707,288 and a net tax refund of $516,354.

[42] The $3 million paid for the non-competition agreement is not an issue since the tax rate on both the non competition payment and the capital gains were both the same 28% in 1988.

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Net Tax Loss (50% of Corporate Tax Plus 1040 Adjustment)	$	190,934
Less Tax Benefitof Tax Loss Carry forward from Dissolution of CMI	$	(505,206)
Net Tax Refund Due	**$**	**314,272**

H. The Report fails to disclose that Marks committed stock fraud against Tucker during the negotiation and sale of Marks' and Meredith's PCSC stock and in the subsequent merger of PCSC into CMI.

Marks was the President of PCSC. Tucker did not known him prior to January 1987. Tucker was approached by Marks and negotiated with Meredith to purchase Meredith's 82% of PCSC stock. The conditions of the sale were as follows:

- Meredith would not provide the warranties and representations normal in the industry in contracts for the sale of cable systems.
- The purchase price of $6.0 million would be in consideration for Meredith's delivery to Tucker of a $7.9 million promissory note [44] from PCSC to Meredith, secured by all assets of PCSC, as well as for Meredith's 82% of PCSC stock.
- In addition to the purchase price, Tucker would have to repay Meredith the $500,000 it had advanced to Marks for the Carrollton cable system.[45]
- All tax liabilities of the corporation had been paid.
- Marks and Meredith were the only owners of the stock in PCSC.

In fact, Marks had secretly entered into a stock sale contract with Michael Starks, the "comptroller" of PCSC. The stock sale contract violated the terms of the stockholders agreement between Marks and Meredith, which was not disclosed in the PCSC books, and had been signed by Marks, on behalf of PCSC, without the knowledge or consent of Meredith. Marks concealed this information from Tucker until about ten days after Tucker signed a note for $8.5 million in connection with the purchase and merged PCSC into CMI, Tucker's previously wholly owned company. Tucker was angry about the fact of this agreement and its concealment. Marks then promised Tucker that he would quickly resolve the dispute with Starks. In reliance on Marks representation that he would resolve the stock claim, Tucker incurred additional liabilities related to the cable companies in which CMI had an interest. During July and early August, Tucker, his wife and his corporate bookkeeper became increasingly uncomfortable with Starks' financial

[43] The net refund shown is the difference between additional personal income tax liability of Tucker for 1988 less the amount of the refund to Tucker for 1999 on the liquidation of CMI after giving effect to the adjustments in the income tax basis of his CMI stock as a result of the deemed sale of the Plantation assets by CMI.

[44] The PCSC stock had a negative book value due to the Meredith Note. Prior to the bankruptcy, a Meredith officer signed an affidavit that the consideration paid was attributable to the Meredith Note only.

[45] A disagreement existed between Marks and Meredith over the Carrollton, Texas cable system. Marks asserted that Meredith had not kept its promise to him regarding financing the system. A Meredith officer who also served as an officer of PCSC stated that Marks "got PCSC into the Carrollton cable system without authority". OIC 302 interviews with William Straw December 30, 1994, April 28, 1995. As a result, Marks had to personally guaranteed repayment to Meredith of the moneys advanced by Meredith for the construction of Carrollton.

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record keeping. His wife and the bookkeeper were both so uncomfortable that they refused to move the CMI corporate record keeping to the control of Marks and Starks.

In late August ACS stated it was willing to purchase the Plantation system from CMI. Almost simultaneously, Starks' attorney began claiming Starks had an interest in the stock of CMI as a result of the merger. Tucker then consulted independent legal counsel, John Haley, to advise him on both the negotiation and contract for the ACS purchase and on the potential claim by Starks.

Because CMI was also the corporate general partner of a limited partnership, Starks claim, if successful, would have brought a potentially dissident minority stockholder into ownership of stock in the general partner of the partnership. Tucker was unhappy but wanted to maintain a good relationship with Marks, upon whom he was relying to manage and expand the cable systems in Florida and Texas and with whom he was now liable on $8.5 million of bank debt.

It is indisputable that the non-disclosure of the Starks contract was a material consideration for Tucker in structuring the purchase and merger of PCSC into CMI. The secret stock sale contract would, on its face, have made Starks a co-shareholder in Tucker's closely held company CMI, without Tucker's consent or knowledge. Starks' attorney was now making the claim that Starks had an interest in CMI.

Under both Arkansas and Federal Securities laws, failure to disclose a material fact during the sale or purchase of stock absolutely entitles the injured party to a rescission. Tucker insisted on his absolute right to rescind under the law and notified Marks of his intention, while assuring Marks that the rescission would be done equitably and in a manner to protect both Tucker's and Marks' interests.

In late September, ACS signed the contract to purchase Plantation. Haley suggested the "Seller" be both CMI and Sattech, a company purportedly owned 100% by Marks.

Immediately after the signing of the ACS sale contract, Tucker borrowed an additional $5 million to buy out other cable interests and for further expansion of the Texas cable systems. Almost simultaneously, Starks' attorney sent a notice of Starks' intent to sue Marks.

Haley had reviewed the books of CMI and determined that the record of the vote cast for the merger of PCSC and CMI reflected too few votes in favor. Although this was a technical error that easily could have been corrected, it served as a basis for both Tucker and Marks to "un-merge" the two companies and protect Tucker from Starks' claim to an interest in CMI and Marks from a claim by Starks on Marks promised interest in CCLP.

Tucker insisted on his right to a formal rescission and reformation agreement ("Rescission Agreement") both to eliminate any subsequent claims by Marks and to reform the valuation agreements between the two.

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Marks also had an interest in the rescission. As part of his agreement with Marks, Tucker had agreed to grant CMI an option to acquire his interest in CCLP (Tucker's Arkansas cable systems). This would have given Marks a 25% interest in the Arkansas cable systems. The merger of PCSC into CMI potentially gave Starks a claim to a part of that value. Marks had never intended for Starks to obtain an interest in assets owned by CMI that were unrelated to PCSC and was furious that Starks was making such a claim. In addition to protecting Tucker's interest in CMI from an unwelcome stockholder, the terms of the Rescission Agreement also help protect Marks from claims by Starks on asset values unrelated to PCSC.

The Rescission Agreement returned the PCSC stock and the Carrollton cable system to Marks; eliminated Marks' claim for $1.1 million against CMI (a part of the original Marks-Tucker merger agreement) and left Tucker as the owner of the Meredith Note and responsible for the bank debt related to the Meredith Note. Tucker then made demand on the Meredith Note,[46] which PCSC could not pay. A company that cannot pay its debts as they come due is "bankrupt" under the federal bankruptcy code. Based on the Note demand, Haley and his partners and independent Dallas counsel for PCSC and Marks helped structure a pre-agreed Chapter 11 liquidating bankruptcy which was entered into by PCSC, CMI, Tucker, Marks and related parties. The bankruptcy was intended to provide for the formal transfer of the Plantation assets to Tucker; to provide Tucker with secure title for his subsequent sale to ACS, and to provide a speedy emergency forum for resolution of any claims Starks might make against PCSC.

On the day the bankruptcy was filed, the Starks' claim was tentatively settled, although a formal agreement was not signed until some weeks later. The bankruptcy resulted in full payment of all creditors and employees; the successful closing of the sale to ACS, and settled all disputes between Tucker and Marks.

I. The Report fails to disclose that virtually all allegations of fraudulent statements in the bankruptcy ignore the reformation of the Marks, Tucker, and CMI relationship created by the Rescission Agreement.

Virtually every alleged misrepresentation in the bankruptcy as to the ownership of LMS/PCSC arises from the OIC's assertion that the Rescission Agreement was a sham. The Report fails to reflect the fact of Marks' stock fraud, or the federal and state securities laws granting Tucker an absolute right of rescission. The Report omits any mention of the defective merger vote. The Indictment does not mention the Rescission Agreement or the stock fraud committed against Tucker by Marks. The Report does not state whether the grand jury was told of the stock fraud or the rescission. The Report fails

[46] The Meredith Note was maintained as an independent obligation assumed by CMI in the merger. The Note was not surrendered or contributed to CMI at the closing nor were the UCC filings related to the Meredith Note cancelled as a part of the closing. Instead the Meredith Note was maintained as a seasoned senior lien protecting against intervening claims. The Meredith Note was equitably subordinated to the claims of the bank note, but Tucker was given express rights under a conditional assignment to enforce his rights under the Meredith Note to protect his and the bank's interests.

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to note that, if the Rescission Agreement is treated as having had a valid business purpose, then the bankruptcy itself must be treated as valid as well.

Despite the repeated reference to a "fraudulent bankruptcy" by the Report, neither Tucker or anyone else was indicted for "bankruptcy fraud".

J. The Report fails to disclose the tax calculation and over $1 million in tax paid by Tucker on his 1988 tax return reporting the sale of the Plantation cable system.

Tucker reported the entire proceeds of his sale of Plantation on his 1988 tax return and a tax liability of $1.25 million on the sale.[47] The tax was based on a taxable gain of $4,466,000. The taxable gain was calculated by subtracting the $6.0 million purchase price Tucker had paid for the Meredith Note[48] (which was secured by a first lien on the Plantation assets), Tucker's payment of various PCSC bills for programming and similar items, and additional monies invested by Tucker after the date of the sale from the $11.75 million sale price. Tucker's reported gain was $4,467,000. In 1990 the IRS audited CMI's and Tucker's 1988 tax return.[49] The auditors were provided the purchase contract showing that Tucker had purchased the Meredith stock and note for $6.0 million; the bank loan documents; documentation that a merger of PCSC into CMS had been attempted but that the merger had failed;[50] the additional expenses incurred by Tucker, which where included in his income tax basis in the Plantation system; and that he resold the system within days after the bankruptcy for $11.75 million plus $3 million in non-competition payments that went to Marks.[51]

K. The Report notes that Marks pled guilty and made various "admissions" but fails to provide information on other admissions by Marks and benefits granted to Marks by the OIC, which bear on Marks' credibility.

In August of 1987, Marks pled guilty to the tax conspiracy charge. Although not disclosed in his plea agreement, the OIC did not seek to prosecute Marks for other unrelated tax offenses, although the Report cites Marks' admissions in his plea agreement

[47] The actual tax paid was $1.09 million due to other losses and deductions unrelated to the sale.
[48] The secured note had a face value of $7.9 million plus accrued but unpaid interest. Tucker's basis in the Note, and his deduction was limited to his actual cost for the Note.
[49] Tucker never met or talked with the auditors.
[50] The CMI corporate records and the disclosure statement reflected these facts.
[51] It should be pointed out that under the OIC theory of a deemed sale of Plantation, CMI would owe no corporate level tax (avoidance of which was the subject of the alleged "tax scheme"); however, Marks would owe tax on his 50% of the gain of $5,077,455, less the benefit of his imputed basis. In 1988, at the 28% rate then applicable, this would have produced a net tax for him (after offset for his imputed basis of about $713,712). Independently of the alleged scheme, Marks admitted, but was not prosecuted for, fraud in not reporting $1.5 million of non-compete payments and would owe tax of about $420,000 on that (at the 28% rate then applicable). This tax, attributable to Marks, would arise even though there would be no corporate loss from CMI and Tucker would be entitled to a net refund of taxes paid.

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as support for its allegations of a conspiracy with Tucker. The Report does not disclose various matters, which might affect evaluation of Marks' credibility. Specifically, it does not report:[52]

- That during his interviews with the OIC, Marks stated he was "shocked" to learn from the OIC that he had not filed tax returns for "about the past eight years"
- That he claimed his accountant's Texas address as his address on his 1998 tax return instead of using his actual California residence address.[53]
- That he only reported ½ of his $3 million non-compete income in 1988 and 1999.
- That he offered his accountant $50,000 to report lower taxes than were owed to the IRS.
- That he did not pay his accountant the $50,000 but did buy him a Corvette and a Mercedes.
- That he had sent Tucker and Tucker's accountant a copy of a 1988 tax return showing his actual income but then filed a false return.
- That when Marks got a new accountant he sent that accountant copies of returns showing his true income rather than of the returns filed with the IRS.
- That he did not report his income from a stock sale or from consulting fees on his 1988 tax return.
- That he had not told Tucker about the stock contract with Starks until after the closing of the PCSC purchase.
- That he had falsely represented that he had a B.A. in engineering from Akron University.
- That he had falsely represented that he had a law degree.
- That Marks, and his near blind wife, were told by an OIC attorney that the $3.5 million size of the alleged tax fraud would result in a mandatory minimum sentence of "at least 39 months" imprisonment.[54]

L. The circumstances of Tucker's guilty plea:

Tucker was charged with a tax fraud conspiracy based on a tax loss calculation that is now known to be demonstrably and inexplicably wrong. Under the federal sentencing guidelines, the size of the intended tax avoidance determines the mandatory minimum prison sentence. Thus, the size of the loss alleged by the OIC, and the mandatory minimum sentence associated with such an intended loss, became a critical factor for Haley and for Tucker. It dramatically enhanced the bargaining power of the OIC in obtaining a guilty plea from Tucker, who had received a liver transplant barely one year

[52] Items a-g are from OIC 302 interviews with William J. Marks Sr. dated as transcribed on Feb 20, 1998 containing interviews on August 20, 21, October 7, 8, and November 3, 4, 1987.
[53] Texas has no personal income tax. California does,.
[54] Contemporaneous notes of telephone call from Marks to Tucker June 13, 1995.

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earlier and was on high doses of medication requiring precise timing of ingestion. Prison for Jim McDougal, who was also on critical medication, ultimately resulted in death.[55]

Trial for Tucker and Haley[56] was scheduled for Monday February 23, 1998.[57] On Thursday, February 19, 1998 Tucker was informed that the OIC had offered his attorney, Haley, the opportunity to plead to a misdemeanor offense. Tucker still had not been informed of what tax law had been the object of the conspiracy or how the OIC calculated the amount of the tax loss.

Faced with the plea by Marks and Haley, his own fragile health and the OIC's continued assertion of multi-million dollar tax losses requiring a lengthy mandatory prison sentence, Tucker agreed to enter a plea of guilty.

He made the following statements at his plea and subsequent sentencing hearings:

- That he had relied upon advice of counsel in all matters involving the tax case, but understood that advice of counsel was not a defense to this charge and that proof of 'intent' was not required.
- That he had never intended to break any law of the United States.[58]

Tucker did not, and does not admit or agree, that the rescission agreement or the bankruptcy was fraudulent or that he intended to deceive the IRS.

Tucker stated that his counsel, Haley, and the debtor's Dallas bankruptcy counsel, had advised him that the September 1987 contract of sale between CMI and Sattech as Sellers and ACS as buyer did not have to be included in the PCSC/LMS bankruptcy disclosure statement.[59] The non-disclosure had nothing to do with taxes. Tucker reported to the IRS that, within days of purchasing the PCSC Plantation assets from bankruptcy, he re-sold those assets (along with his personal warranties and the Plantation related assets owned

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[55] Tucker was barely one year away from his liver transplant, and was on heavy doses of steroids and prograf. James McDougal, who was also on heavy and precisely scheduled medications, did in fact die in prison two weeks later, on March 8, 1988.

[56] Haley was almost 67years of age at the time of his plea and was a surviving cancer patient having had extensive surgery and radiation in 1991. Immediately prior to his plea he had been diagnosed with a new tumor in his throat, and underwent surgery in March 1998 to remove the salivary gland and the tumor, which was found to be benign.

[57] The Report and Starr in an "op ed" article both lament the 33 months which elapsed between the tax indictment and Tucker's guilty plea in February of 1998. Both blame the delay on the legal challenges to Starr's jurisdictional right to charge for an offense, which did not involve any of the "covered persons" which were the subject of the investigation. In fact, all but eight months of the delay was due to Tucker being in another trial (March to June 1996) and Tucker's liver transplant and related hospitalizations (June 1996 through January 1998).

[58] In the 8th Circuit willfulness is not an element of the offense. *United States v. Derezinski*, 945 F.2d 1006, 1012 (8th Cir. 1991)

[59] That information was excluded from the bankruptcy with the knowledge and advice of Dallas counsel for the debtor in bankruptcy, of Dallas counsel for Marks, and of Arkansas bankruptcy counsel for Tucker for Tucker who were all of the opinion that its disclosure was not required and would not have affected the bankruptcy result.

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by CMI) for $11.75 million plus $3 million in non-competition payments to Marks.[60] If there was a question of whether Tucker was paying "fair market value" for the PCSC Plantation assets in the bankruptcy, surely his sale of what, on the surface, were the same assets less than two weeks later would have put that at issue.[61]

Tucker believes the "fair market" valuation of the PCSC assets for the bankruptcy was reasonable given the fact that the Plantation system was by then in an "overbuild" competition with a vastly larger competitor[62]; that "fair market valuation" does not include sales to "special buyers" such as ACS which was purchasing a monopoly (not included in the FMV of PCSC's ownership); that the ACS contract included the sale of major assets that were not the property of PCSC/LMS and were, in fact, the property of CMI; and that the contract included warranties and representations that LMS/PCSC could not fulfill unless Tucker personally provided his guaranty.[63]

III. RESPONSE TO THE OIC'S STATEMENTS, CONCLUSIONS AND OMISSIONS REGARDING THE JUNE 1995 INDICTMENT ("HALE INDICTMENT")

SUMMARY:

Tucker was indicted on a conspiracy charge and ten substantive counts based on individual transactions which included the Dean Paul ("Etta's Place") loan, the Steve Smith Communication Company loan, the South loop loan, the CMS loan to Castle Sewer and Water ("CS&W"), and a mail fraud charge related to the CMS loan to CS&W.

The district court dismissed the four substantive counts related to the loan for Steve Smith's "Communication Company." Smith testified that the OIC had tried to force him to lie and say Tucker was involved in that loan.

Tucker was acquitted on all substantive counts related to the Dean Paul ("Etta's Place") loan, and the South loop loan.

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[60] *See* Haley affidavit, Exhibit 1. In addition the agents admitted, and their notes reflect, that they reviewed the relevant loan documents. The October 1, 1987 bank loan agreement, which was essential to establishing the basis in the returns being reviewed, contains a specific description of the September 1987 contract, the parties to the contract, the amount of the contract, and the scheduled closing date.

[61] *See* Exhibit 1, Haley affidavit and attached exhibits from his bankruptcy expert re bankruptcy propriety of not including the ACS contract in the disclosure statement.

[62] ACS was the 23rd largest MSO in the United States with 461,600 subscribers on June 30, 1987.

63. In preparing the valuation of the assets the following matters were taken into consideration: The stock market crash of November 7, 1987 and the resulting adverse impact on cable system values in the following two months; prices based on usual per subscriber and cash flow multiples in the industry; that a $6 million purchase price had been paid for the Meredith Note and 82% of the stock of PCSC just seven months earlier, and that translated to a price of $7,317,000 for 100% of the assets and about $4.8 million for Plantation; that the valuable access rights to the Gulfstream properties was owned by CMI and was not an asset of PCSC/LMS; that the Company was in competition with ACS and would require substantial financial resources to continue to compete if the sale to ACS did not occur; that the ACS contract was with Sattech and CMI and not with the debtor, PCSC/LMS; that the ownership of PCSC/LMS might be in dispute due to the claim by Starks.

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Tucker was convicted only on the general conspiracy charge alleged by David Hale to have been initiated at a meeting in Tucker's kitchen in late October of 1985 and on a mail fraud charge related to the CMS loan to CS&W and based on a "form 1031" prepared and mailed by Hale to the SBA stating that the loan proceeds were to be used for "working capital" rather than for a down payment.

Hale's story of a conspiracy involving Tucker was false. Hale's testimony that he lied on the form 1031 to hide the purpose of the use of the loan funds as a down payment was also false. Tucker did not testify.[64]

A. Evolution of Hale's Conspiracy story:

1. The Report fails to disclose that Hale's initial public allegations in late 1993 coincided with Hale's extensive conferences with Republican and right wing individuals and organizations prior to his plea bargain agreement with the Special Counsel.

Hale's allegations of wrongful activity by President Clinton and Governor Tucker began immediately after he hired as his lawyer, Randy Coleman.[65] and as he faced crises on two fronts: (1) the SBA had caught Hale in a large and complex fraud, totally unrelated to any of the allegations regarding Clinton or Tucker; and (2) the Arkansas Insurance Commissioner had caught Hale in a fraud involving false financial records in an insurance company owned by Hale.[66]

Hale's allegations were against the chief executives of the two governments he knew were preparing to prosecute him.

Hale's counsel[67] told the U.S Attorney's office for the Eastern District of Arkansas that Hale had important information about powerful political figures. In return for the information, Hale wanted a guaranty that the charges against him would be limited to a misdemeanor and that he could continue his law practice. Hale was invited to make a formal proffer of his allegations, but his counsel refused to do so. Hale then made a public statement regarding his allegations just prior to his indictment by the U.S. in late September of 1993 and began making a request for an Independent Counsel based on grounds that the local U.S. Attorney had conflicts with both the Governor and the President.[68]

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[64] Tucker was sick. The direct case by the OIC had lasted three months. A full case by the defense would have lasted at least one month for Tucker plus the time for each of the other two defendants. Tucker was severely ill with liver disease. He was placed on the transplant list within days of the conclusion of the trial and was transplanted less than seven months later. .

[65] Mr. Coleman appears to have provided his legal services to Hale free of charge, as did Theodore Olson. However, the American Spectator's "Arkansas Project" paid at least one member of Coleman's firm for services provided to Hale. *See* report of OSR.

[66] This had been reported to Tucker prior to any of Hale's allegations and Tucker told the Commissioner to do his duty.

[67] Prior to Hale hiring Coleman, Hale asked two other lawyers to negotiate with the U.S. Attorney. If Hale made similar allegations to those lawyers, they were never conveyed to the U.S Attorney.

[68] To date, IC Starr's conflicts with the same persons have not been successfully challenged.

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At least as early as the first days of October 1993 Hale began intensive telephone conversations[69] with 'Justice' Jim Johnson, a Clinton and Tucker hater.[70] By November 1993 Hale was in touch with David Bossie[71] and had begun interviews with NBC, CNN, and on the Floyd G. Brown radio show. Brown was a vitriolic right wing Clinton opponent, radio talk show host, and author of at least one anti-Clinton book.[72] In the interviews, Hale gave his first descriptions of the alleged conspiracy and called for an Independent Counsel.

2. Before meeting with the American Spectator and Theodore Olson, Hale told CNN and NBC that Tucker was NOT PRESENT when McDougal proposed the conspiracy to "clean up" the "political family."

Prior to Hale's extended discussions with the American Spectator and its Washington legal counsel, Hale's November 1993 version of events given to CNN[73] and NBC[74] was that:

a. Tucker was NOT present when McDougal raised the issue of the "cleaning up" the "political family;"
b. There was no discussion of Tucker "needing money"; and
c. There was no discussion of Hale's purchase of Etta's place or any "assignment" of duties to Tucker.

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[69] Transcript 3733. The first of more than 25 calls from Hale's office or home was October 3rd. Calls from Johnson to Hale or meetings between the two could not be identified.

[70] Johnson was a former Democratic Arkansas Supreme Court Justice and segregationist candidate for governor. According to an Associated Press interview at Johnson's home, "White Haven", Johnson claimed to have forced Faubus to shut down the Little Rock public high schools on the eve of desegregation by conveying false rumors that armed citizens opposed to integration were enroute to Little Rock.

[71] Bossie was an employee of Floyd Brown through the right wing group "Citizens United". Hale said Bossie had called "his attorney"

[72] *"Slick Willie- Why America Cannot Trust Bill Clinton"*

[73] Transcript 3652, 3910 To CNN on November 24, 1993:
Hale: "The meeting ended at Tucker's house that day with them simply asking for the financials" (CNN Transcript Line 8, Frame 574-5946). "...the only thing they wanted to do was look at my real estate and see what I had."[73] ...
CNN: I wonder if you couldn't just say it again. (McDougal) called you and what he said:
Hale: Well he called me you know. I can't remember whether he called me, whether we were together or what. But it was shortly after the meeting at Jim Guy's house and that he asked me – he said he was going to need my assistance in cleaning up the political family; that he had an audit coming up in January, and that he needed some assistance, and I said "Okay, well you know I don't know, remember what he said at that time. But that was basically the essence of it." (emphasis supplied).

[74] Transcript 3901, 3904, 3905, 3906,
NBC:. And they told you about the problem in the political family.
A. Yes sir...well when I went down to the first meeting we just talked about the property they were developing out there [34 acres at 145th St.] and the SBIC. It was the follow-up meetings that McDougal advised me that he—that there was an audit coming up and there was some cleaning up to be done in the political family".

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3. Hale's story changed after his meetings with the American Spectator and Theodore Olson.

Within days of the CNN and NBC interviews, Hale began meetings with Steve Boynton, Parker Dozhier and other representatives of the American Spectator. In early December of 1993, a meeting was arranged in Washington D.C. with Theodore Olson. Hale traveled to Washington D.C. with representatives of the American Spectator and was introduced to Theodore Olson. According to the Shaheen report,[75] the purpose of the meeting was to ask Olson to represent the American Spectator and to represent David Hale. Olson admits that he agreed to represent the Spectator at the December 1993 meeting. Hale testified Olson began representing him at the same time, However, Olson states (in the Shaheen Report) that his representation of Hale did not begin until 1995.[76]

By January of 1994 Hale was regularly meeting with the representatives of the Arkansas Project at the Hot Springs, Arkansas fishing resort of Parker Dozhier, an agent paid by the Spectator as part of the Spectator's "Arkansas Project," which was an effort to gather "dirt" on Clinton and his associates.

[75] The Report of the Office of Special Review, headed by Michael Shaheen; see *supra.*

[76] *See also* Exhibit 5. Since Olson admits to having agreed to represent Hale at the request of the American Spectator, the time at which the representation began is relevant for at least two reasons: (1) It defines the scope of attorney client privilege for meetings between Hale and the members of Olson's firm; and (2) it defines the time period for measuring the amount of free legal services provided to Hale. Olson admits having provided $140,000 of free legal services to Hale during the period. Since Olson is only counting services from some time in 1995, but Hale asserts the services started in 1993, this calculation may be considerably understated.

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After those meetings, and at trial,[77] Hale testified that he, Tucker, and McDougal, met in Tucker's kitchen in fall of 1985 and that at that meeting, with Tucker present:

a. McDougal articulated the motivation for the conspiracy as being the need to "clean up" some matters for the "political family;"
b. That Tucker needed money; and that
c. Tucker was assigned the task of closing Hale's purchase of Etta's Place as soon as possible.

B. The Report omits any explanation of why Hale's extensive associations and contacts with the right wing, or questions about them by the OIC, were not disclosed in Hale's 302s or in the Report.

The official OIC version of Hale's conspiracy story is contained in Hale's trial testimony, supplemented by Hale's grand jury testimony and the OIC's "302" interview summaries. The 302s make no mention of any statements of Hale as to his ongoing associations with right wing enemies of Clinton and Tucker. Either the OIC did not know about such contacts, which seems highly unlikely, or the OIC did know but did not ask Hale about these contacts, or the OIC knew and asked but did not make a record or disclose the results of Hale's responses to those he was accusing. The Report offers no explanation at all. Hale's grand jury testimony on these matters was simply a reading of a script prepared for him by the OIC, approved by Hale and then read to the grand jury.

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[77]Transcript 3097-3102 Hale's trial testimony alleged:

That the conspiracy began in Tucker's kitchen in late October or early November of 1985. In response to a question from McDougal, Hale told him that CMS (Hale's SBIC) had $700 to $800 thousand in cash. McDougal then turned to Tucker and said: "We're going to have to get some money in David's SBIC." Hale then suggested to McDougal that Madison buy $500,000 of stock in CMS, but McDougal replied:

"Well, what we've got in mind that might not be a good idea; you know, we've got to-I'm going to need some funds, and we're going have to clean up some members of the political family, and I don't believe, you know, that would be a good idea." He asked "Why don't I just loan you the money"" and I said "Well..(that) wouldn't do much good because..it would take a long time...probably eight or nine months.

We talked about the need to get money faster than that and talked about what kind of real estate that I had. Jim Guy was just handling the closing on the piece of property for me in Sherwood and we talked about that piece of property—Etta's Restaurant, I had owned with Jim Larrison, His widow wanted everything back. Jim Guy and I had been negotiating and working on closing of that purchase for some time and he and I talked about that property and whether or not you could borrow or sell—sell that property in order to get $500,000... whether it would appraise out maybe because we owned it jointly and I had given $275,000 to Mrs. Larrison for her undivided ½ interest.

We discussed that property would not sustain an equity position of $500,000, that it would not appraise for that. And that's where Jim McDougal said to let him worry about that.

We reached an agreement there that night and different things that each of us would do. Jim Guy Tucker would get the purchase of the property completed as soon as possible. I would look for a buyer, someone we could put the property's name in. Jim would see to it that Madison loaned enough that we would have $500,000 to put into the SBIC for Jim Guy Tucker and Jim McDougal and others to have the funds they needed...get the money from Madison and put it into the SBIC and loan it out. One of the reasons we talked about was to get the loan limit up to $300,000. No particular loans were discussed.

We agreed on our duties and that as soon as Jim Guy could close out the Larrison property, we would get back together on our duties.

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A "302" interview summary is a document prepared from the notes done by attorneys or agents of the OIC during interviews with Hale. Not all interviews or meetings with Hale were converted to 302s. But the results of almost 40 recorded interviews were summarized in one internally consistent '302' document with a list of all the dates and participants in the interviews. Which revelations occurred first and last and which changed along the way cannot be discerned. That is, with only the 302s, and without the underlying OIC notes made during the interviews, there was and is no way for the public, or a defendant, to know how Hale's story may have evolved over time. Without such information, it is virtually impossible for a defendant to be impeached with lies, omissions, or misrepresentations he made to the OIC as his story evolved. Counsel for the defendants requested those notes prior to Hale's testimony. The OIC opposed the request.[78]

Even assuming there was a shocking consistency and smoothness to Hale's story, as reflected in those notes, there may have been outside relevant factors. For example, it is now known that prior to and throughout the period of Hale's plea bargaining[79] and all of his interviews listed in the 302s, Hale was simultaneously engaged in regular meetings with and receiving benefits from various individuals associated with right wing organizations dedicated to politically damaging the President of the United States and, if possible, obtaining the President's impeachment and removal from office.[80] This included legal counsel for Hale, recruited by the American Spectator purportedly for the sole purpose of helping him prepare his testimony for possible presentation to the United States Congress.

Without access to the raw notes taken by the OIC agents during the interviews to see how Hale's story evolved, and access to what inquiries the OIC must have, or at least should have, made to protect the integrity of their witness including the relationships between Hale and agents of the American Spectator, it is impossible to determine the truth about Hale's story of conspiracy with the Democratic President of the United States and the sitting Governor of Arkansas.

The Report fails to note that Tucker has a petition for relief[81] pending under 28 USC §2255, along with associated motions seeking discovery and the authority to depose witnesses including various persons who were then agents of the American Spectator and the "Arkansas Project."

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[78] Disclosure of the actual notes is discretionary with the trial court.

[79] Where an indicted defendant is seeking leniency in return for information, normally a formal 'proffer' is required prior to any agreement with the defendant. If any such proffer was ever made, it has never been disclosed.

[80] Agents of the OC were fully aware of these meetings. *See* Exhibit 4, Affidavit of Caryn Mann. Prior to trial the OIC told the court and the defendants that it had "no direct knowledge" of any meetings or contacts between Hale and the American Spectator, other than routine press contacts. The OIC also opposed defendant's request to make inquiry into such contacts.

[81] See Exhibit 5.

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C. The Report omits the fact that at the time of the alleged conspiracy McDougal was engaged in ongoing fraud against Tucker and Clinton, and others:

During the period at issue and before, McDougal had been actively defrauding Tucker, Clinton, and others and making unauthorized use of the names of his friends. The OIC was provided with copies of forgeries by McDougal involving a former wife of Steve Smith[82], Tucker[83], William Fulbright[84] and others. In addition, McDougal made use of Tucker's name on bank accounts at Madison and elsewhere of which Tucker was totally unaware. The Report reflects that moneys from these accounts, and from the Whitewater account involving the Clintons, was routinely intermingled and used for unauthorized purposes by McDougal. In the case of Tucker the most serious forgeries and improper use of funds involved 2,500 acres of timberland purchased by Tucker, McDougal and Steve Smith in about 1978. The land was purchased from International Paper Company at auction for $90.05 per acre. In 1982, Tucker relinquished his interest in the International Paper land in exchange for McDougal's interest in a separate parcel of real estate. However, the bank would not release Tucker from the note for the International Paper land purchase and Tucker remained liable. McDougal continued to sell that land on contracts of sale. Payments on the contracts of sale were to go to pay off the bank mortgage. In fact, beginning at least as early as 1985, McDougal began diverting payments to other uses and began delivering deeds to owners without first paying off the mortgage to the bank. Tucker discovered this in 1987 when the bank called on Tucker to pay the note, which he did.[85] This record regarding McDougal, and the well-established record on Hale, amply demonstrates that both men were actively engaged in a pattern of misusing names of friends, and politicians, to meet their own financial needs.

D. Tucker did not participate in the meetings described by Hale or in the alleged conspiracy; had no "need" for money at that time; received no money from any of the four loans involved in the conspiracy; and had no other reason to participate in what was essentially a loan swapping arrangement between Hale and McDougal.

Tucker was not needed in the conspiracy to accomplish the aims of McDougal and Hale. To include Tucker would have complicated the conspiracy for McDougal and Hale. McDougal and Hale used their associations with Tucker, Clinton and others to achieve their goals. But they did not bring those people into their schemes.

Hale's first articulated premise as to why Tucker participated in the conspiracy was McDougal's alleged comment that "Jim Guy's going to need some funds." In fact, Tucker got no funds from the conspiracy and needed none. Tucker was in strong financial condition by November of 1985 and was not in need of money. In June of 1985

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[82] On a note to a north Arkansas bank.

[83] On deeds to mortgaged property.

[84] Involving real estate in Castle Grande.

[85] Susan McDougal was genuinely shocked to discover this and was very helpful in reconciling the land records. Because of this fraud against Tucker, Tucker declined to testify as a character witness for McDougal in his 1989 trial.

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he had sold a ½ interest in his cable company for $2 million; in December of 1995 he sold additional cable interests; and he had a large and prosperous law practice with national clients. Tucker received none of the proceeds from the Dean Paul loan, and Tucker received none of the proceeds from the loans to CS&W.

However, McDougal, Hale, Dean Paul and William Watt[86] did need money. Paul had placed a mortgage on his home for $200,000 and was being threatened with imminent foreclosure.[87] Hale had financial problems as well, and was trying to purchase an insurance charter with William Watt.[88] McDougal had significant financial needs both in his S&L and personally. Tucker was unaware of the Steve Smith loan [89] and simply had no stake in the fraud described and no motive for involvement.[90]

The Eighth Circuit agreed that Tucker had "no real profit stake" in the alleged conspiracy and simply concluded that Tucker was "accommodating" the conspiracy between Hale and McDougal in return for past favors to Tucker! The fact that Madison had made loans to Tucker's cable company was cited and is true. But every single loan had been repaid with interest. Furthermore Madison was only one of eight lenders that had loaned money to Tucker's cable company. Most, but not all, had loaned for cable construction in their particular market areas of Tucker's franchises. Madison had done the same.[91] In all, Tucker and his cable companies borrowed and repaid over $25 million in loans during this time. The fact that Tucker would be able to have his cable company hook up subscribers in McDougal's development was cited and is true. But the development needed the cable service more than the cable service needed the real estate development. Tucker's cable company already served the area adjacent to Castle Grande and was in no danger of competition from another cable company in that area. The fact that McDougal helped Tucker with a loan to purchase the note Tucker guaranteed at Saver's is true, and that McDougal coupled that loan with Tucker's purchase of 34 acres from MFC is true. But why would that be a 'favor' to Tucker? Hale's company had made loans to Tucker's cable company as well. It was the business of his company to make loans to small businesses. All the loans were on regular commercial terms and were current or had been paid. As was well known in Little Rock, Hale was looking for loans to make.[92]

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[86] Watt obtained the inflated appraisal on the real estate purchased with the Dean Paul loan.

[87] Transcript 3587-88. The Bank was "hot after" Paul.

[88] The proceeds of the Dean Paul loan were used to provide money to Paul and Hale and to provide money to Hale's SBIC. Watt then assisted Hale in making fraudulent SBIC loans to a front company to be funneled back for use by Watt and Hale in buying an insurance company. Neither Watt nor Hale were prosecuted on those transactions. Such a prosecution would have required detailing the tie between the Dean Paul loan and the Hale-Watt insurance company purchase.

[89] See following section (2).

[90] The Eighth circuit noted that Tucker was acquitted on the Etta's Place transaction *US V Tucker* 137 F.3d 1016, 1020, fn 11 (8th Cir 1998); and that the CS&W transaction was not to Tucker's great advantage, but that it was "not necessary to show that Tucker profited in order to prove he was part of the conspiracy". (*id.* at 1034)

[91] First Commercial Bank, Twin City Bank, Eagle Bank, First State Bank of Beebee, Metropolitan Bank, Maryland National Bank, CMS and Madison. Madison and CMS were the smallest lenders.

[92] Hale solicited Tucker, partners of Tucker, and local S&L's and business people for loans.

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C. The Mail Fraud Allegation:

Hale testified that Tucker had told him that the $150,000 in proceeds from the loan to CS&W would be used for the down payment to MFC. However, after the loan was made, Hale (not Tucker) filled out and mailed to the Small Business Administration a "Form 1031", which was required for the administration of every loan. The Form 1031 required a statement of purpose of the loan. Hale (not Tucker) filled in the purpose: "working capital".[93] Although the Report fails to disclose it, Hale admitted that he routinely used the description "working capital" as "a generic term that's just kind of a catchall"[94] on virtually all of his 1031s. In this instance, however, Hale suggested that he lied to hide the fact that the loan was to be used for the down payment. But, in fact, there was no reason to hide the true use of the funds.

Both Hale and the OIC, at trial, and the Report imply that there was some SBA regulation prohibiting CMS from making a loan for a down payment for the purchase of a small business.[95] That is false. No such regulation existed. Thus, there was no reason for Hale (or Tucker) not to tell the truth about the use of the loan proceeds. Perhaps Hale was trying to mislead the SBA on this issue, but the more likely reason he listed the use of the funds as "working capital" at the time was that he was simply using his catchall" description as he always did on Form 1031s. His trial testimony incriminating Tucker and his false assertion of a regulatory prohibition on loans for "down payments" were inventions developed by Hale in interviews with the OIC and others prior to Tucker's trial. Tucker had no reason to want Hale to misrepresent the use of the proceeds and did not know that Hale had done so. [96]

Tucker did not simply "accommodate" McDougal on the sewer and water purchase. If Castle Grande expanded, as proposed, and, especially, if the proposed south loop highway was completed, Tucker expected the company to be profitable. First, he did substantial due diligence[97] in January and prepared various cash flow projections to predict debt levels and potential profit levels. Second, he proposed, and McDougal agreed, that CS&W would charge "hook up fees" in the same fashion and at the same rate as the City of Little Rock and that MFC would have to guarantee a minimum number

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[93] *US v Tucker, Op Cit* at p. 6

[94] Trial Transcript p. 3262

[95] The Report at p. 73 falsely characterizes the loan as falling under a regulatory prohibition against use of an SBIC loan for a down payment "on real estate". Prior to the Report, there has been no assertion by anyone, including the SBA, that the CS&W loan was considered to be a "real estate loan". In any event, that regulation relates to down payments for the purchase of undeveloped real estate. CS&W purchased a going business with a positive EBITDA and with prospects of much greater income from MFC's continued development of Castle Grande. The business had existing customers that included Siemens- Allis, Levi Strauss, Guardsmark, and other industrial and business customers as well as a Rockefeller related 'Quail Creek' real estate development adjacent to the MFC project.

[96] Hale also said Tucker had falsified the pro forma financial statement submitted with the loan application. Hale asserted that the purchase price originally proposed for the system was $1.5 million and was then reduced to $1.2 million. Hale did not explain why the loan application only requested a $50,000 advance if $300,000 was needed to close.

[97] This included multiple engineer meetings on the conditions of the sewage ponds; review of health department and pollution control reports; and discussions with the states utility commission on regulatory requirements and enforcement.

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of hookups per month. Tucker then offered to purchase the property for $1,050,000 with 100% financing from MFC, $100,000 of the financing to be on a short-term note due in six months. Tucker believed that CS&W could refinance the $100,000 within six months, if Castle Grande grew as projected by McDougal. Those terms were the basis of the loan application and the pro forma submitted with the loan application on February 14, 1986. That application requested only a $50,000 advance of funds at closing. The resulting projected liabilities and assets of the corporation were clearly shown. The basis for the corporation's proposed "net capital" was to be made up primarily of the $479,000 difference between the $1,529,000 appraised replacement value[98] and the $1,050,000 purchase price. Only $50,000 would be needed initially from the CMS loan. Tucker had received a proposal of $35,000 to scrape and paint the inside of the water tank (a needed maintenance item)

After that loan application was submitted, McDougal called Tucker and further negotiations ensued. McDougal said his board had agreed to the hook up fees and minimum guaranty but required a $1.2 million sale price with $150,000 cash down payment. McDougal said he had already talked to Hale who had agreed to this use of funds. Tucker agreed and then asked an associate attorney in his office to prepare an amended loan application to reflect the new terms. The associate's time records reflect his work on the loan application for CS&W on February 19 and 22 and that the associate met with Hale, McDougal and Tucker on February 21st. Whatever work product was generated did not survive the decade between the event and trial. But these records demonstrate indisputably that work was being done on another loan application AFTER the submission of the February 14 application on which the mail fraud indictment was based. Hale knew what the funds were to be used for and did not require a revision prior to closing the loan on February 28th. Tucker, heavily pre-occupied with an upcoming trial[99], and knowing that Hale was fully aware of the use of the funds, never thought to protect himself with a subsequent note or letter to Hale.

IV. THE OIC ENGAGED IN A PATTERN OF ELICITING TESTIMONY WHICH IT KNEW OR SHOULD HAVE KNOWN TO BE FALSE

The following is not meant to be exhaustive, but is demonstrative of the OIC's conduct.

A. As to government regulations.

1. The OIC solicited testimony it knew to be false and the Report repeats the false assertion that Hale's SBIC was not permitted to make loans except to "socially or economically disadvantaged persons".[100]

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[98] A copy of the Edward G. Smith & Associates evaluation, with notes was attached as Exhibit A to the loan application.

[99] Tucker's time records reflect that at this time he was engaged in intense preparation of major ($3 billion) litigation for a national client.

[100] Paragraph 1 (g) of the Indictment included this misrepresentation.

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Hale's SBIC license was issued under Section 301(d), which was originally intended to be limited in making loans to person who were "socially or economically disadvantaged". However, as the OIC knew this restriction had been removed from all 301(d) SBICs in the SBA's Midwest Region generally in 1992, and from Hale's SBIC specifically in 1993,[101] before any of the loans in question.

On September 13, 1983, the chief of the Midwest Region Office of Investment, wrote a letter regarding the Proposed Examination Letter of CMS to the Assistant Inspector General's Office. The letter stated:

> "As you are aware, there is no statutory or regulatory definition of socially or economically disadvantaged for purposes of the administration...of Section 301(d) financings. It is apparent, as evidenced by the Business Capital Corporation, license number 06/06-5177 experience that absent a statutory or regulatory definition, the socially or economically disadvantaged requirement is unenforceable. For at least a year, OGC, with some input from your office and the Investment Division, has attempted to draft such a definition for inclusion in the regulations. In the interim your office has expressed its intent to discontinue citing findings of Activities not contemplated by the act; small concerns financed not apparently qualified as socially or economically disadvantaged.
>
> "Under the circumstances the findings cited in the subject exam report, which was apparently issued prior to your decision to discontinue reporting such findings has not been included in the examination letter. Please provide your reply to this office within three working days from receipt of this material.[102] (emphasis supplied)

Although the OIC was fully aware of this letter and of the fact that the SBA did not enforce this restriction with regard to any 301(d) SBIC, the OIC alleged in the indictment and elicited testimony at trial from both Patricia DiMuzio of the SBA and from Hale that CMS was restricted in its loans. The only purpose of such testimony was to prejudice and mislead the public and the jury.

Contrary to the statements made and testimony solicited by the OIC, Hale's SBIC could loan to any "small business enterprise." A small business enterprise was defined as a company with total assets of not more than $9 million and with net income of not more than $400,000 for the preceding two years.

[101] In August of 1993, Hale told Tucker that the restrictions on his SBIC had been removed and that his SBIC could make loans without regard to any special or economically disadvantaged restrictions.
[102] Transcript 2350, 2356, 2358, 2418.

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2. The Report states,[103] in discussing the loan for the down payment on the purchase of the CS&W assets, that federal regulations did not permit CMS to loan money for a down payment on real estate. That is a misrepresentation:

First, CS&W was clearly not a real estate loan and was not asserted to be, even by Hale. While the CS&W assets did include some real estate, as is the case with many businesses, the assets being purchased were those of a going business. The sewer and water business purchased from Industrial Development Corporation ("IDC") included connections to and revenue from customers including Levi Strauss and Siemens Allis, the new homes being sold and installed by MFC at Castle Grande, Castle Grande itself and the adjacent WinRock development of Quail Creek. The assets included a water storage tank and pumps with access to a very large aquifer as well as two large sewer ponds, revenue of over $6,000 per month and cash net cash flow of over $5,000 per month. The company operated with virtually no overhead and 90% of all new revenue would hit the bottom line.

Second, the prohibition on loans for down payments on real estate relate to undeveloped or 'raw' land and had no relevance, in any event, to CS&W.

3. The OIC solicited false testimony from Hale that he could not serve as the director of a company to which CMS had loaned money.

During trial the OIC solicited testimony from Hale that he could not serve as director of a company to which CMS had loaned money and that SBA auditors would see that as a violation, because "it was illegal". [104] This was in connection with CS&W, which was then 1/3rd owned by Hale's company, CMS. This was one of the many false statements about government regulations solicited from Hale. The OIC counsel knew or should have known it was false. The truth is that SBICs could own up to 49% of a company and Hale, as an officer and owner of CMS, was permitted to serve on the board of such a company.[105]

4. The OIC solicited false testimony that an SBIC could not make loans to "lawyers of the corporation."[106]

This solicitation was part of the pattern of the OIC. It was intended to show that Tucker was breaking SBA rules by receiving loans. The testimony was false. SBA rules only prohibited loans to lawyers "regularly serving the SBA on retainer" or representing the SBIC before the SBA.[107] Tucker did neither and the OIC knew that. The only purpose for eliciting the testimony would have been to imply Tucker was violating a rule of the SBA, when the OIC was aware that he was not covered by that rule.

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[103] Report p. 73.
[104] Transcript 346, 3487.
[105] 13 CFR Part 107, §107.801.
[106] Transcript 3073, 3077.
[107] 13 CFR §107 3(a)(4).

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B. As to the R. D. Randolph loan guaranty:

In the grand jury and at trial the OIC elicited testimony from R.D. Randolph that Randolph had been tricked into signing a personal guaranty of the loan by CMS to CS&W. The OIC elicited testimony from Randolph that the guaranty must have been a part of all the papers he signed at the closing of the CS&W loan. In fact, Randolph was not present at the closing of either the Madison or the CMS loan. Even had he been present, as the documents reflect, Randolph did not sign a single closing document. This was not told to the grand jury and was misrepresented to the trial jury in Randolph's testimony.

The OIC also solicited testimony from Hale that he had been unaware of Randolph's ownership interest in the sewer and water assets until he saw Randolph's signed guaranty, which Hale suggested had been prepared by Tucker. In fact, as the OIC knew, Tucker did not and could not have prepared the loan guaranty. The OIC knew the guaranty had been prepared by Hale's secretary on an electronic form at Hale's office. The guaranty form did not match any form used by Tucker's firm, and, more importantly, the form did match precisely the form used by Hale's company and routinely prepared from a 'card' on which it was stored. The form had multiple typographical and spelling errors, which were identical to all other guaranties used in Hale's transactions. The misrepresentation by the OIC was designed to suggest Tucker had cheated or tricked Randolph and was made both in trial and to the grand jury.

V. OTHER ERRONEOUS OR FALSE STATEMENTS IN THE REPORT

A. Regarding the 34 acres on 145th Street

1. The Report falsely states that only 18.8 acres of the 34 acres purchased by Tucker at 145th Street was usable because the rest lay in a floodplain.

The Report fails to disclose that development of land in the 100-year floodplain is done routinely and is expressly permitted by law. It is false and deliberately misleading to state that such land was "unusable" due to floodplain status. For example, the floodplain was (and still is usable) for such things as parking for a strip shopping center, recreational facilities for a trailer park, and a variety of other purposes. Even land in a "floodway" can be used for parking facilities. Furthermore, floodway (and floodplain) land can be more intensively developed if compensating actions are taken to alleviate adverse impacts from the use of the land. A common example, and one proposed by the engineers who suggested development strategies for this property, would be to use lowest areas of the land as a catchments area for water run off, or creation of a small pond for the same purpose.

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2. The Report falsely states that the OIC's investigation did not reveal any documentary evidence as to the purpose of the loan.

The Report states that this loan could not be charged as a substantive offense because the OIC investigation "did not reveal any documentary evidence relating to the purpose of the loan."[108] The Report states that "two" checks were issued at the closing: one to Tucker for $135,000 and one for the property purchase to Madison Financial for $125,000.[109] The OIC knows, in fact, that three checks were issued at closing: one to MFC for the purchase price; one to Tucker for the balance and simultaneously exchanged for a check to "Savers Federal Savings & Loan Assoc. Remitter: Jim Guy Tucker, Loan Proceeds". The cashier's check was requested by a note handwritten by the secretary at the closing and stating "per Jim McDougal". The check and note clearly documented the use of the loan proceeds. The check could not have been overlooked by the OIC and to represent that only two checks were issued and leave out reference to the handwritten note is wrong. A copy of the note is Exhibit 2 to this Response. The third cashier's check was exhibited to the OIC at Tucker's trial.[110]

3. The Report falsely characterizes the transaction as creating a "paper profit" of $93,620 for Madison.[111]

The profit was real. Tucker purchased the land from MFC, borrowed the money from Madison for the purchase and paid the loan in full. It is wrong for the OIC to characterize the profit for Madison as "paper" when it was real.

4. The Report falsely implies the loan was a "non-recourse" loan.

The Report implies this loan falls in the definition of a loan to a "straw" purchaser (or nominee purchaser) or one who has no personal recourse and "... would have nothing to lose from agreeing to pay an excessive purchase price."[112] Tucker was personally liable for and paid the entire $125,000 purchase price for the 145th street property.[113]

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[108] Vol. I appendix 3 p. 156. This statement directly contradicts the statement in the Report that Madison "documents claim the $135,000 loan was to be used for property improvements." Preface p. 47

[109] Preface p. 47.

[110] At the closing the check to Tucker for $135,000 was exchanged for a cashier's check to Saver's for $131,641.50, the exact amount of the Saver's Note payoff.

[111] Volume I, p. 47.

[112] Vol. I Appendix 3, p. 46. Senator D'Amato, the Republican Chairman of the Senate Whitewater Hearings, also falsely stated in nationally televised hearings, that Tucker received this loan as a non-recourse loan. The loan was a personal loan to Tucker for which Tucker was personally liable.

[113] After Madison went into receivership it transferred many loans to independent third parties for resolution. In the fall of 1992 Tucker had requested and was waiting for a payoff amount on this loan. During that same period someone on behalf of the RTC was calling lawyers in Little Rock asking them to file an "urgent" collection suit against Tucker. The need for a fast filing was so "urgent" that the lawyers were requested to file a foreclosure suit on the property without first getting an abstract of title on the mortgaged property. This is during the same period that US Attorney Banks was being "pressed" by certain FBI agents and RTC personnel to take immediate action, before the 1992 presidential election, on this and other RTC referrals naming Tucker and Clinton as witnesses.

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B. Regarding loan payments to CMS on the CS&W loan while CS&W was under Tucker's control.

During the entire time Tucker controlled CS&W, from January of 1986 until October of 1987, regular loan payments were made to CMS. It was only after October of 1987, when Tucker became a minority shareholder and Hale and R.D. Randolph controlled CS&W that loan payments to CMS became erratic. In January of 1989 Tucker gave up all interest in CS&W because he had major surgery at that time to remove his large intestine. Following that Randolph and Hale stopped making loan payments completely.

At trial, Hale testified that the CMS auditors had noticed that loan payments were not being made prior to November of 1987. That was false. The OIC knew it was false because they had seen the loan payment sheets and knew no such report existed. But they did not correct Hale's testimony.[114]

C. Regarding Tucker's relationship to Madison, CMS and Hale.

Tucker is constantly referred to as an "insider" at Madison without benefit of definition of that term. Hale also repeatedly referred to Tucker as "his" attorney and "the" attorney for CMS.

During the period in question, Tucker was a partner in a law firm composed of approximately 35 attorneys. Tucker's area of practice was complex commercial litigation.

Hale and the OIC constantly referred to Tucker and his firm as the "attorney for" Madison, for Hale and for CMS. The Report makes similar references while omitting the following material facts.

1. Madison and MFC:

- Neither Tucker or any member of his firm ever owned any stock in Madison.
- Neither Tucker's firm or Tucker were general counsel for Madison or for MFC. Each of these entities called on the firm for representation only on specific matters.
- Neither Tucker or his firm was ever paid a retainer by Madison while McDougal was in control of Madison.
- Tucker never did any regulatory or corporate work for Madison.
- Tucker never closed a loan for Madison.
- Tucker's personal work on behalf of Madison would have resulted in fees of less than $10,000 over a four year period and occurred in 1982 when he was asked to assist Madison with a second mortgage lien on real estate; in approximately 1983 when McDougal formed a company to apply for a specialized SBIC license for real estate lending, although he changed his mind after applying; and in early

[114] Transcript 3465.

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1985 when Tucker was asked to find a local lawyer in the State of Maine and to assist with registration of real estate under the Interstate Land Sales Act. Tucker did some limited research and visited the property once.

- After McDougal was removed from Madison, Tucker's firm was hired, with approval of the FHLB, to do substantial work for Madison but Tucker never participated in that work.

2. CMS and Hale:

- Neither Tucker or any member of his law firm ever owned any interest in CMS.
- Neither Tucker or any member of his firm ever did any corporate or regulatory work for CMS, including, specifically, any regulatory work or application for funds to the SBA on behalf of CMS.
- Neither Tucker or anyone in his firm ever represented CMS in a loan closing.
- Members of Tucker firm did some specific work on bad debts and bankruptcies involving loans by CMS.
- Tucker did litigate issues for Plainview Lumber Company, a company owned in part by CMS and in part by Dean Paul, related to the company's default on a bank loan and a hazardous waste site on the property.
- Tucker represented Hale personally in two disputes over notes Hale owed to banks. Other members of Tucker's firm provided Hale some tax advice and assisted Hale in the incorporation of a company in 1982.

3. Hale's and CMS's other lawyers:

- Hale admitted that he and his company used more than 14 other lawyers for various transactions and made loans to or for the benefit of at least three of those lawyers.[115]
- A Republican attorney handled Hale's application for his SBA license.
- Hale's applications for matching funds from the SBA (including applications arising from fraudulent financings by Hale) were handled by a former Republican State Chairman, who also received a loan from Hale which Hale told the FBI was fraudulent and a payoff for the lawyer's help on other matters.

[115] Transcript 4103-4105.

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VI. SUMMARY OF THE OMISSIONS IN THE REPORT REGARDING STARR'S CONFLICTS OF INTEREST WITH TUCKER AND PRESIDENT CLINTON

A. The Report does not discuss Starr's apparent and actual conflicts of interest in investigating and prosecuting Tucker and Clinton.

1. Background

The Report omits any reference to the multiple conflicts, which existed with regard to Kenneth Starr serving as an Independent Counsel investigating President Clinton and Governor Tucker. The Fifth Circuit Court of Appeals has considered the following factors in evaluating conflicts:

> whether a conflict has (1) the appearance of impropriety in general, or (2) a possibility that a specific impropriety will occur, and (3) the likelihood of public suspicion from the impropriety outweighs any social interest which will be served by the lawyer's continued participation in the case.[116]

Kenneth Starr was appointed by the Special Panel to replace Robert Fiske after Republican members of Congress complained that Fiske should not serve due to a conflict of interest. At the time the three judges on the Special Panel were considering whether Fiske would continue to handle the politically sensitive investigation of President Clinton involving Governor Tucker, the Chief Judge of the Panel met on Capitol Hill with Sen. Launch Faircloth (R-NC) who was leading the efforts to remove Fiske. Also present was Sen. Jesse Helms (R-NC). Both Faircloth and Helms were bitter critics of Clinton, and strong supporters of the tobacco industry and religious involvement in government; all of which Clinton opposed. Shortly after the lunch, the Special Division removed Fiske on the grounds that Attorney General Janet Reno had originally appointed Fiske.[117]

In removing Fiske the Panel stated:

> This reflects no conclusion on the part of the court that Fiske lacks either the actual independence or any other attribute necessary to the conclusion of the investigation. Rather the court reaches this conclusion because the Act contemplates an apparent as well as actual independence on the part of the Counsel. As the Senate Report accompanying the 1982 enactments reflected...'Throughout our system of justice, safeguards exist against actual or *perceived* conflicts of interest without reflecting adversely on the parties who are subject to the conflicts...(emphasis added). Just so here...

The Panel then appointed Kenneth Starr.

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[116] FDIC 50 F.3d at 1314; from Memorandum Opinion and Order *In Re Kenneth W. Starr*, U.S.D.C. E.D. Ark., May 30, 1997, at 17.

[117] Washington Post, Aug. 12, 1994; The Senator and the judge denied they had any discussion concerning the issue of Fiske or his successor.

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2. Starr's Initial Conflicts

Kenneth Starr had lost the job to which he had been appointed by President Bush in the previous Bush administration as a result of Clinton's defeat of Bush. He was former legal counsel to the Republican Party.[118] He had provided assistance to the legal team representing Paula Jones[119] in pending civil litigation against Clinton. He represented, and continued to represent major tobacco companies[120] and conservative organizations[121] whose interests were adverse to Clinton and Tucker. His income was and continued to be substantially affected by the profits of his large national law firm partnership representing interests before agencies and individuals appointed by the subjects of his investigation.[122]

All of Starr's ethical conflicts with Clinton were also conflicts with Tucker. First, because Starr, himself, argued that Tucker's relationship with the Clintons was such that Judge Henry Woods should not be permitted to sit as judge on a case involving only Tucker, because he was a friend of the Clinton's. The Eighth Circuit (with all judges but one of those appointed by a Democrat recusing) agreed, ruling that a conflict with one was a conflict with both.

The rationale of the Court of appeals in *U.S. v. Tucker,* 78 F.3d 1313 (8th Cir 1996) is instructive. The Court of Appeal noted that:

- The conflict of interest analysis is governed by the appearance of impropriety standard. ("It is the appearance of bias or partiality that matters here, not actual bias. at 1324)
- The submission of news articles is sufficient to find the existence of a conflict. (at 1322-231)
- Tucker succeeds to any conflicts of interest the Independent Counsel, particularly Starr, had with President Clinton.

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[118] See e.g. *Rove v Thornburgh*, 39 F.3d 1273 (5th Cir. 1994).

[119] Ark. Dem. Gaz., Jan 30, 1998, reporting Starr's May 1994 activities on behalf of Jones.

[120] Washington Post, by Anne Groer and Ann Gerhart, March 26, 1996, Reliable Source': " ...hired at Kirkland & Ellis in 1993 at a salary of $1 million, [Starr] has continued to represent clients on a limited basis since his Whitewater appointment in 1993. Among them: tobacco giants Brown & Williamson Corp. and the conservative Bradley Foundation which has funded court battles for school choice and school prayer".

[121] The arch conservative Bradley Foundation funded a long list of harshly political anti-Clinton organizations. Among them, The American Spectator magazine, which first published the so called "trooper gate" story, a matter within Starr's jurisdiction, and National Empowerment Television, a right wing Clinton-bashing cable network that was giving substantial coverage to a range of persons promoting the idea that Vincent Fosters suicide was a murder conspiracy involving the White House.

[122] Other Starr clients included The American Automobile Manufacturing Assn., Bell Atlantic, Chiquita Brands, Inc., General Motors, Great Lakes Chemical, Phillip Morris Companies, Southwestern Bell Telephone Co., and others. Source: *Executive Branch Personnel Public Financial Disclosure 1994-1997.* Tucker and Clinton had bitter fights with the tobacco industry during their tenures. Tucker over tobacco taxes. Clinton on federal litigation against the industry. Starr also owned material amounts of stock in companies such as Coca Cola with whom Tucker had a protracted and bitter battle. A major confrontation between Tucker and the soft drink industry, led by Coca Cola, was underway when Starr accepted the appointment and resulted in a loss for Coca Cola three months later. But, the dispute continued thereafter. Many of his other stock ownerships involved corporations regulated by both Arkansas and the Federal government.

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The Court of Appeals reasoned as follows:

First, there are (newspaper) articles that connect Judge Woods and Hillary Rodham Clinton (at 1323).

For their part, President and Mrs. Clinton have been reported to have expressed continued support for Tucker since his indictment by the Grand Jury. (at 1323)

Tucker also acknowledged the perceived connection when he was quoted as saying of the OIC: "I think that's been much of their goal, to try and tar the (P)resident with images of wrongdoing here in his home state. (at 1323)

3. Starr's Conflicts with Richard Scaife and Theodore Olson:

Theodore Olson was a former partner to Starr; and a personal, political, and professional friend to Starr. They were active in conservative causes together. Olson states that in 1995 David Hale hired Olson to represent him. Agents of the American Spectator introduced Hale to Olson in 1993. Olson undertook legal representation[123] of the American Spectator then or shortly thereafter.[124] The American Spectator received funding from a client of Starr's, the Bradley Foundation, and from Richard M. Scaife. Scaife is a right wing billionaire who funded a large number of conservative and anti-Clinton efforts.[125] According to press articles, a meeting in Olson's office has been described by one participant, as the start of what later became known as the "Arkansas Project," a Scaife-funded effort (through the American Spectator) to gather information damaging to Clinton and his associates and, as the record now demonstrates, to obtain legal counsel for Hale and to provide for the care, feeding, housing, office resources, travel and other conveniences for Hale – and to serve as a forum for discussing Hale's allegations against Clinton and Tucker, before and after Hale's plea agreement. According to the affidavit of one witness, (Exhibit 4) agents of the OIC were routinely present at the fishing resort, owned by an American Spectator agent, where Hale met with various other representatives of the American Spectator.

Whether or not Starr was aware of these conflicts prior to January of 1996, he was certainly put on notice then. Tucker specifically asked Starr's office for any knowledge they had about Hale's relationship with the Scaife-funded American Spectator. Starr's office denied any "independent" knowledge of such, other than "routine" press contacts.. When Tucker asked that Starr's office inquire whether a relationship existed that might affect their star witness against Tucker, Starr's office denied any duty to go on a "fishing

[123] In approximately 1996 Olson began serving as a board member of the American Spectator.

[124] At trial, Hale said that Olson's representation began in December of 1993, which would have been simultaneously with Olson's undertaking representation of The American Spectator. Transcript 4109-4111

[125] "...Scaife ...according to media reports...has used his fortune to press a media campaign discrediting President Clinton and suggesting that Vincent Foster, Jr. may have been murdered....The Scaife Foundation has supported a number of conservative entities, including Accuracy in Media, The Western Journalism Center, the National Taxpayers Union, and the American Spectator. Some or all of these groups have offered commentary on the Whitewater controversy and the death of Vincent Foster, which commentary was critical of President and Mrs. Clinton." *In Re Kenneth W. Starr*, U.S.D.C. E.D. Ark, No. LR-M-97-91, May 30, 1997 Opinion and Order of Thomas Eisele.

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expedition." Thus, Starr was making decisions not to inquire into a relationship between Hale and an organization which was funded in part by one of his clients (the Bradley Foundation), and represented by his former partner and close personal and political friend, whose agents and employees were in frequent meetings and contacts with Hale, and whose employee was providing Hale with financial and personal benefits. It is now known, that Olson, whose representation of Hale was obtained by The American Spectator, also provided Hale at least $140,000 of free legal benefits. It is also now known that Starr may have been closely involved with The Scaife Foundation as early as 1993 in helping to establish a public policy school at Pepperdine University).

At trial, as Tucker's counsel attempted to discover how Hale had ended up with high priced D.C. counsel, such as Olson, as his attorney, and whether Hale's testimony might have been influenced by his arrangements with political opponents of Tucker and Clinton (arrangements then unknown and undisclosed to Tucker), Starr's deputy objected calling the inquiry into Olson's relation with Hale and Starr "outrageous." Thus, Starr, through his deputy, was concealing facts about a relationship that involved his clients and friends

In the Spring of 1997, Starr announced that he would resign from the OIC in order to become dean of the law school and school for public policy at Pepperdine University. According to a spokesperson for the school of public policy, Starr taught at Pepperdine in 1991 and 1993 and became intimately involved in the project to establish a school of public policy at Pepperdine[126] The Scaife Foundation was one of three foundations that helped underwrite the nine million dollars to start the school. Scaife's foundation made at least one contribution of $250,000 in 1993 to establish the public policy chair at Pepperdine. In February of 1997, the Scaife Foundation provided $1.1 million for the start up costs for the school of public policy. Then, in the Spring of 1997, Mr. Starr announced he would leave the OIC in August of 1997 to become the dean of the school of public policy funded by the Scaife Foundation. After public criticism, Starr then announced he would delay starting at Pepperdine to continue his work as Independent Counsel. A Washington columnist then wrote "Starr is now beholden to Pepperdine to hold open a job, for which it is partly beholden to benefactor Scaife".[127]

Judge Thomas Eisele issued his opinion in the Pepperdine matter on May 30, 1997:[128]

> ...it is difficult to argue that Mr. Starr is not laboring under at least an appearance of conflict...In the situation before the Court, Mr. Scaife, said to be a bitter opponent of the President and Mrs. Clinton, especially with regard to Whitewater related issues, has apparently helped to arrange and make possible the very career opportunities that Mr. Starr wishes to pursue as soon as he completes work as Independent Counsel. It appears that Mr. Starr may be involved in a third party conflict of interest—that is 'the independent counsel..has an obligation to a non-client third party that

[126] The spokesperson for the school said it was founded, in part, to serve as a philosophical counterpoint to the liberal School of Government at Harvard University. *In Re Kenneth Starr*, at 19.
[127] *In Re Kenneth Starr*, at 20.
[128] In response to the complaint of Francis T. Monadic.

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> could compromise the independent counsel's neutrality in a matter under investigation. (at 20)

Starr defended himself as having no conflict but, eventually, announced he would abandon his plan to go to Pepperdine.

Then, just prior to Tucker's trial date in the tax indictment (in which Hale was to be a witness), the initial details of the relationship between Scaife, Olson, the American Spectator, the "Arkansas Project" and Hale became public information.[129] The allegations included suggestions that Hale had received financial benefits from the Scaife funded "Arkansas Project."[130] Starr now had before him, both the issues of the first Tucker case involving Hale, Scaife, the American Spectator, and Olson (who by now was a board member of the American Spectator), and also the issues of those same relationships and Hale's testimony against Tucker in the tax indictment case, then on the eve of trial.[131] Starr provided Tucker no information on his relationship with Scaife or on the Hale-Scaife-Olson relationship, and made no declaration of conflict.

VII. THE REPORT OF THE OFFICE OF SPECIAL REVIEW

1. The Office of Special Review

Following the revelations regarding the Hale-Scaife-Olson matters, there was substantial critical press comment. Eventually, Starr designated Michael Shaheen to investigate Starr's own office. Shaheen was to report to the so-called "oversight panel" of two former federal judges.[132] Mr. Shaheen's group was designated the "Office of Special Review" ("OSR"). The OSR conducted interviews and convened a grand jury in the Western District of Arkansas to review some of the issues associated with these matters. Based on correspondence (cited below) between Robert Ray and the U.S. Senate, its authority was strictly limited to inquiring into and reporting on defined criminal conduct.

On July 27, 1999, the OIC issued a press release stating that no prosecutions would be brought as a result of its investigation. Other news reports indicated that two Department of Justice employees were referred for internal discipline. The OIC declined to make the Report public and had never made the Report available to Tucker.

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[129] "Rickard Scaife paid for Dirt on Clinton," New York Observer, Feb 9, 1998.

[130] More detailed press reports were not available until after the Tucker plea, when The New Yorker, and Salon published multiple articles that Hale had testified falsely at Tucker's trial concerning the circumstances of his hiring of Olson and payments to Hale by agents of the American Spectator.

[131] Within two weeks of this revelation, Starr offered a misdemeanor plea to John Haley, the attorney who had designed and overseen the transaction at issue as Tucker's counsel. That effectively forced Tucker to abandon trial. Starr's office made no disclosure to Tucker of what it had learned about the "Arkansas Project" at that or at any other point.

[132] There is no indication that the Shaheen conclusions were ever reviewed by a serving Article III judge.

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2. The Scope of the OSR investigation

The OIC has refused to disclose the scope of the investigation to which Starr agreed. However, the redacted versions of the OSR Report ("Redacted OSR Report")[133] make it clear that Starr limited the investigation only to criminal matters.

As the Redacted OSR Report and accompanying correspondence makes clear, the OSR's authority was narrowly delineated. The present Independent Counsel, Robert Ray, wrote to Senator Orrin Hatch (R. UT) on May 21, 2001 stating that:

> It cannot be emphasized enough, however, that the answers below are based on information gathered by an investigation that had the sole mandate of determining whether facts and circumstances existed to establish beyond a reasonable doubt that one or more persons made efforts through the payment of money or otherwise to corruptly influence David Hale's testimony or information provided by him in connection with an official proceeding or whether Mr. Hale demanded, received, or agreed to receive such things of value for or because of his testimony....Any responses set forth below that do not fully address the questions posed by the Committee reflect the fact that the purpose of the Shaheen investigation was to determine whether any crimes had been committed in connection with the underlying allegations of possible bribery, witness tampering, or obstruction of justice involving Mr. Hale. (p. 2) (emphasis supplied)

Thus, the OSR was not permitted to make inquiry into, or a report on, such issues as whether the matters involved (a) raised conflicts of interest issues for Starr, (b) would have been important to a jury in evaluating the truthfulness or motivation of Hale's testimony, (c) provided evidence of improper concealment of *Brady* or *Giglio* information from Tucker or other defendants by Starr's office.

The July 27, 1999 press release, from the OIC was pregnant with locutions indicating the existence of significant *Brady* and *Giglio* evidence, which was not provided to Tucker. Quoting the release:

> (T)he Shaheen investigation concluded that "many of the allegations, suggestions and insinuations regarding the tendering and receipt of things of value were shown to be unsubstantiated, or, in some cases, untrue..." The investigation further concluded that: ...there is insufficient credible evidence to support criminal charges. In some instances there is little if any credible evidence establishing that a particular thing of value was demanded, offered or received. In other instances, there is insufficient credible evidence to show that a thing of value was provided or received

[133] *See* Exhibit 6. Made available by the United States Judiciary Committee during the May 2001 hearings on Olson's nomination as Solicitor General.

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> with the criminal intent defined by the applicable statutes." (emphasis supplied)

A logical reading of these conclusions as to whether there were matters concealed from Tucker translates as:

> Some of the allegations, suggestions and insinuations, regarding the tendering and receipt of things of value were shown to be substantiated, and, in some cases true. In some instances there is credible evidence establishing that a thing of value was demanded, offered or received. In other instances the evidence is insufficient to show that the thing of value given was given with criminal intent defined by the applicable statutes.

The Redacted Version of the Report (Exhibit 6)dealt solely with Olson. (Where a matter is redacted an XX appears). It reveals that:

- Information was developed that suggests, and in one instance actually establishes, that persons associated with the American Spectator paid part of Hale's legal bills and arranged or provided legal representation for him which Hale could not afford. (p. 5)
- In December 1993 Olson was contacted about providing counsel to the American Spectator. He admits that David Hale may have been present at the meeting along with others. (p. 78)
- "In connection with the Shaheen investigation, Mr. Olson has never spoken specifically to the question of whether the December 1993 meeting concerned issues beyond the 'legal representation of the Spectator' or the legal representation of Hale." (Ray May 21, 2001 letter, p. 4).
- Olson says he began to represent the American Spectator as a result of that meeting but did not begin to represent Hale until October or November 1995.
- Hale stated in Tucker's trial that Olson started representing him in 1993.
- In late 1993 or early 1994, The Center for Individual Rights proposed to pay Olson for Hale's legal representation, but Olson did not disclose this until at least his fourth OSR interview, on October 23, 1998. (pp. 83, 78), Interviews are shown as being on 9/4/98, 9/25/98, and 9/21/98.
- Olson's firm entered into the relationship with no real expectation that the firm would ever be paid. (pp. 29, 76) because they knew that Hale would not be able to pay the firm's bills.(p. 29)
- People at The American Spectator knew Olson's bills had not been paid. (p. 80)
- Olson's firm provided over $140,000 of free legal services to Hale (the starting and ending date not being disclosed) while simultaneously representing the American Spectator.

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- People at the American Spectator were aware Hale had not paid his bills.
- Hale was using the Little Rock house that the magazine was renting from XX as an office. (p. 83)

The affidavit of Caryn Mann, attached as Exhibit 4, sets forth in detail other benefits Hale received from agents of the American Spectator and the constant presence of agents of the OIC's office during the time periods when these benefits were being offered and accepted.

The Report never explains why this information was not made available to Tucker and the jury in Tucker's case. Whether Hale's extensive and long term relations with Olson, Scaife, and The American Spectator had an influence on his testimony was a matter for the jury to know about and decide.

The Report fails to make any statement about when the OIC agents learned the identities of the person providing benefits to Hale, why the relationship was not disclosed to Tucker in January of 1996, whether any internal inquiry was ever made, why the OIC is presently resisting Tucker's request for depositions of the parties involved, and why the Report has excluded any information on this subject which it received from its own present and former agents and employees, from whom it has surely made independent inquiry by this time.

VIII. RESPONSE TO THE REPORT'S SUMMARY OF TUCKER'S GRAND JURY TESTIMONY:

The report contains a summary of an excerpt of Tucker's grand jury testimony regarding "Etta's Place" which requires context to avoid being misleading.

Tucker was acquitted on the Etta's Place transaction ("Dean Paul loan").[134] Dean Paul, who already owned a part interest in the property, purchased the property from Hale with the proceeds of an $850,000 loan from Madison. At trial, Hale testified that a conspiracy involving this property was initiated at a meeting between Tucker, McDougal and Hale in the kitchen at Tucker's home in downtown Little Rock.[135] Hale testified that at the meeting Tucker was assigned the task of getting a speedy closing for Hale's purchase of a former partner's interest in Etta's Place.[136] Hale also testified that thereafter Tucker was in a hurry and urged him to get the closing done as soon as possible. In fact, as the OIC must have known if they interviewed the selling party or her lawyer, Hale was facing

[134] *See U.S. v. Tucker*, 137 F.3d 1016, 1034, fn 11 (8th Cir. 2000).

[135] Prior to the American Spectator assisting him with obtaining legal counsel, Hale had given TV interviews in which he stated that only the 145th street property owned by Tucker was discussed. At trial he explained the different versions by saying his legal counsel had advised him to "save something for the wedding."

[136] If the OIC ever conducted such an interview and received such information, it was not provided to Tucker, and it would have been exculpatory, given Hale's trial testimony that Tucker was pressing Hale to close in order to further the "conspiracy".

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extreme pressure to close the sale, not from Tucker but from the widow of his former partner.

The Report states[137] that "Tucker testified before the grand jury regarding the meetings between Tucker, Hale and McDougal. Tucker asserted Hale's testimony had been false and that the meetings described by Hale had never occurred. Tucker did admit to having had a meeting with Hale and McDougal at which a sale of Etta's Place was discussed. Etta's place was one of the properties involved in the fraudulent scheme."

The Report omits the pre-"conspiracy" history of Hale's dealings with the Etta's place property, which, along with other property, was used as security for the February 28, 1996 Dean Paul loan.[138] That history (not requested in the grand jury) is essential to the context of Tucker's testimony. It also demonstrates a key part of Hale's perjured testimony at trial.

Tucker was not pressing Hale to close the purchase of Etta's; but, the widow of his deceased partner in Etta's Place was definitely pressing him to close.

Hale and James Larrison, a Little Rock lawyer, were partners in the Etta's Place property. Etta's Place was a very large restaurant building with excellent frontage in the rapid growth North Little Rock/Sherwood boundary area. The total property included an adjacent undeveloped tract, also with excellent frontage. After Larrison's accidental death, his widow sought to wind up the partnership affairs involving Hale. She retained a Little Rock lawyer for this purpose and Hale asked Tucker to handle the closing of the transfer of Larrison's undivided 50% interest in the property. Tucker began oversight of that task in late 1984 or early 1985, with the day to day work overseen by an associate in the firm who did real estate work. By the summer of 1985, the associate was reporting to Tucker that Hale kept raising excuses for not closing. By October of 1985, the widow's attorney was threatening to sue and was expressing considerable anger over Hale's continued failure to close. Tucker suspected that Hale had financial problems in closing the purchase, but conveyed to Hale that he had to close or face litigation from Larrison's widow. Hale agreed to close and Tucker, at that point, talked with the opposing counsel and took over responsibility for closing the transaction. Tucker went to Hale's office and looked at surveys of the property. McDougal was either there when Tucker arrived, or showed up while Tucker and Hale were looking at the surveys. McDougal remained at Hale's office after Tucker left.[139]

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[137] Volume I, App. 5, 'Prosecutions', page Xi.

[138] Tucker was acquitted on all substantive charges related to the Dean Paul loan.

[139] This was about the time Hale was attempting to purchase another, larger, Little Rock SBIC, which Tucker knows that Hale had been discussing with McDougal. This was the only meeting Tucker ever had with Hale where McDougal was present and the subject of the Etta's Place property was raised; or, for that matter, the only meeting he can ever recall where the three of them were together alone for any purpose.

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IX. THE CHILLING EFFECT OF AN IC WITH CRIMINAL JURISDICTION AND APPARENT POLITICAL CONFLICTS

Justice Jackson was all too prescient:

> It is in this realm – in which the prosecutor picks some person whom he dislikes or desires to embarrass, or selects some group of unpopular persons, that the greatest danger of abuse of prosecuting power lies. It is here that law enforcement becomes personal, and the real crime becomes that of being unpopular with the predominant or governing group, being attached to the wrong political views, or being personally obnoxious to or in the way of the prosecutor himself.

Quoted in Justice Scalia's dissent in *Morrison v. Olson*, 487 U.S. 654, 728 (1988).

An Independent Counsel with criminal jurisdiction is a poor tool for "obtaining the truth." The limitations of criminal discovery, and the penalties to the targeted defendant for resisting the prosecutor, are such that truth in the court room can vary markedly from the real truth. Perhaps more importantly, given the inherent political nature of an IC, criminal litigation can obscure truths critical for the American people while resulting in the harshest of consequences for those who are not "persuaded" to provide "valuable" information to the prosecutor.

In the Whitewater cases, and specifically those dealing with Tucker, the civil discovery process would have provided the OIC with the answers it needed, while at the same time preventing most of Hale's misrepresentation's and revealing the extent and nature of his association with political groups hoping for influence and political gain from his testimony. Pre-trial civil discovery of expert witnesses would have also prevented the OIC's misrepresentations as to applicable tax law and loss.

The net effect of leaving the OIC with criminal powers only is to raise the stakes for both the prosecution and the defense in cases that are likely to have political consequences for persons and institutions holding vast power. Under such circumstances the truth may become far less important than 'winning'. That is exactly what occurred in this OIC investigation.

The appointment of Kenneth Starr as IC met precisely the profile predicted by Justice Scalia in the *Olson* case: Starr lost his political post in President Bush's Administration due to Clinton's victory. Starr had represented the Republican Party and had actively participated in assisting the counsel for Paula Jones in embarrassing civil litigation against President Clinton. Starr was hired after an experienced, and essentially non-partisan, counsel was removed. The circumstances of Starr's appointment included last minute meetings between at least one of the most right wing members of the Senate and the Chief Judge who appointed Starr. Finally, at the time of his appointment and thereafter Starr, continued a law practice representing clients with significant conflicts with those who were the targets of his investigation and prosecutions. Surely, even a citizen who believed in the guilt of all involved, would not think that such an

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appointment would engender the appearance of impartiality. Judge Woods was removed from hearing the tax case against Tucker not on the grounds of any conflict, but because of the potential for the appearance of a conflict.

For those who spent years dealing with an IC with apparently overwhelming conflicts, the distinction between Judge Woods and Mr. Starr is odious. All defendants, whether elected officials or not, are entitled to have prosecutors that neither have nor appear to have conflicts.

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GLOSSARY

Castle Grande	A real estate development owned by MFC.
Castle Sewer & Water Corporation	A sewer and water system serving various industrial, business and residential customers in and adjacent to Castle Grande.
CCLP	County Cable Limited Partnership. An Arkansas limited partnership owned 50% by various Arkansas doctors and businessmen and 50% by CMI and Tucker. CCLP owned cable TV system in Arkansas and the Southlake Texas cable TV system. CCLP sold the Southlake cable system to CMI simultaneously with Tucker's purchase of PCSC.
CMI	Cablevision Management Inc. An Arkansas 'S' corporation owned 100% by Jim Guy Tucker until June of 1987 when Tucker attempted to convey 50% interest to Marks as part of and attempted merger of PCSC into CMI. CMI also served as the corporate general partner of CCLP.
CMS	Capital Management Services Inc. CMS was an SBIC licensed by the SBA and owned by David Hale.
Dean Paul Loan	An $850,000 loan to Dean Paul by MGS&L used to purchase various property including a portion of Etta's Place from Hale. Hale used the funds in part to increase the capital of CMS in order to obtain more federal matching money for that SBIC.
Etta's Place	A former restaurant and real estate in Sherwood, Arkansas owned by David Hale and the widow of his deceased partner until November of 1995, when Hale bought the widow's interest. Hale and Dean Paul used a portion of the Etta's Place property as a part of the collateral for the Dean Paul Loan.
Madison:	Madison Guaranty Savings and Loan, am Arkansas sate chartered savings and loan.
Meredith Note	A promissory note from PCSC to Meredith Corporation secured by all assets of PCSC. The note was in a face amount of over $7.9 million and reflected advances made from Meredith to PCSC. The Meredith Note was purchased by Tucker at the same time as he purchased Meredith's stock in PCSC.
MFC	Madison Financial Corporation. The holding company for MGS&L, permitted by federal regulation to engage in certain

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	businesses, not permitted to be directly owned by a savings and loan.
OSR	Office of Special Review. Headed by Michael Shaheen, who was selected by Kenneth Starr, to investigate Starr's witness David Hale.
Report	The portions of the Report of the Independent Counsel provided to Tucker.
SBA	The United States Small Business Administration
SBIC	Small Business Investment Company. An SBA licensed company, which was designed to assist 'small businesses' with loans not normally commercially available. 'Small businesses' were generally defined as those with less that $2 million in pre tax income or $9 million in total assets.
TAMRA	Technical and Miscellaneous Revenue Act of 1988.
TRA	Tax Reform Act of 1986
Transcript	The transcript of the proceedings in *US v. Tucker*, U.S.D.C.E.D. Ark. LR-CR-95-173

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TAB 1

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NOW, THEREFORE, BE IT:

RESOLVED, that the President and any Vice President of this Corporation be, and each of them acting singly hereby is, authorized in the name and on behalf of this Corporation to execute and deliver the Agreement of Consent, Modification and Confirmation of Security, and any other agreements, documents and instruments authorized in the preceding resolutions, said agreements, documents and instruments to be substantially in the form annexed hereto with such additions or changes thereto as may be required by the Lenders or as any such officer may, in his discretion, deem to be the best interest of this Corporation in connection with the transactions contemplated by the Loan Agreement and Modification; and that the President and any Vice President be, and each of them acting singly hereby is, authorized to execute and deliver on behalf of this Corporation all such further agreements, documents and instruments and to take all such further action as may be necessary or desirable to carry out the foregoing resolutions and transactions contemplated thereby.

FURTHER RESOLVED, that the President and any Vice President of this corporation be, and each of them acting singly hereby is, authorized to execute the Agreement of Consent, Modification and Confirmation of Security, and any

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SHAREHOLDERS:

William J. Marks, Sr.

Jim Guy Tucker

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AGREEMENT OF MODIFICATION, CONSENT AND CONFIRMATION OF SECURITY

THIS AGREEMENT made as of this 1st day of October, 1987, by and among JIM GUY TUCKER (Tucker") and, WILLIAM J. MARKS, SR. ("Marks"); CABLEVISION MANAGEMENT, INC. ("CMI"), COUNTY CABLE LIMITED PARTNERSHIP ("CCLP"); BEEBE CABLEVISION PARTNERSHIP ("Beebe"); FLEET NATIONAL BANK ("Fleet"); and STATE STREET BANK AND TRUST COMPANY ("SSB")

RECITALS

1. Tucker and Marks (together, the "Borrower") and Fleet and SSB (together, the "Lenders") entered into a Demand Line of Credit Agreement dated as of June 10, 1987 (as heretofore and hereafter amended, the "Loan Agreement").

2. In connection with the original execution and delivery of the Loan Agreement, Fleet, as Agent for the Lenders (the "Agent"), is a party with each of the Borrower and CMI to a Security Agreement of even date therewith (as amended from time to time, the "Security Agreements"); the Agent is a party with each of CMI and the Borrower to a Conditional Assignment of an Agreement for Purchase and Sale of Assets of even date therewith (as amended from time to time, the "Conditional Assignments"); the Agent is a party with Tucker and CMI and with CMI and CCLP to a Collateral Assignment and Pledge of Partnership Interests of even date therewith (as amended from time to time, the "Pledge Agreement"); the Agent and the Borrower are parties with CMI, CCLP and Beebe to Subordination Agreements of even date therewith (as amended from time to time, the "Subordination Agreements"); CMI is a party to a Guaranty in favor of the Lenders of even date therewith (as amended from time to time, the "Guaranty"). The Security Agreements, the Conditional Assignment, the Pledge Agreements, the Subordination Agreements, the Guaranty and all other Security Documents (as defined in the Loan Agreement, as originally executed and delivered) executed by any of the parties hereto in connection with the Loan Agreement are sometimes hereinafter referred to collectively as the "Security Documents".

3. Contemporaneously herewith, subject to certain terms and conditions, (a) the Lenders have agreed to increase the Lines of Credit under the Loan Agreement pursuant to a Letter Agreement of even date herewith between the Lenders and the

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Borrower amending the Loan Agreement (the "Amendment Agreement") and pursuant to the Amended Notes (as defined therein) and any and all promissory notes issued in replacement of thereof from time to time by the Borrower to the Lenders and (ii) Fleet is issuing its Letter of Credit in the amount of $399,000 for the Borrower's account and on behalf of Steve Hansen, Max Hooper and George Hayes (the "Letter of Credit"), in which Letter of Credit SSB will purchase a participation on a pro rata basis and in respect of which SSB will receive its pro rata share of all fees (all of the foregoing, as described in this paragraph 3, being hereinafter collectively called the "Lender Obligations").

4. As a condition to Fleet's willingness to issue the Letter of Credit and SSB's willingness to purchase its participation therein and the Lenders' willingness to enter into the Amendment Agreement and increase the Lines of Credit, the Borrower, CMI, CCLP and Beebe (the "Borrower Group") are entering into this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the parties hereto, the parties hereby agree as follows:

1. Consent. To the extent required, if any, CMI, CCLP and Beebe hereby consent to the execution, delivery and performance by the Borrower of the Amendment Agreement and the consummation of all of the transactions contemplated therein.

2. Supplements to Exhibits. Concurrently herewith, the Borrower Group is supplementing the original Exhibits and Schedules to the Security Documents (the "Supplements"), as provided in Exhibit A attached hereto, to indicate any changes to such original Exhibits and Schedules since the date thereof, after giving effect to the transactions contemplated in the Amendment Agreement. The Borrower Group hereby represents and warrants to the Lenders that all of the information contained in the Supplements is true and correct on and as of the date hereof.

3. Confirmation of Security. Each member of the Borrower Group (but, with respect to CCLP, only as to the Subordination Agreement to which it is a party), hereby confirms and agrees that the Lender Obligations and all other obligations of the Borrower to the Lenders shall constitute "Obligations" or "Guaranteed Obligations" or "Bank Indebtedness" as the case may be, for all purposes of the Security Documents and, howsoever defined, shall be secured by and entitled to all of the benefits of the Security Documents.

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4. General. This Agreement may be executed in any number of counterparts, which shall together constitute an entire original agreement, shall be construed in accordance with and governed by the laws of the State of Rhode Island and shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

IN WITNESS WHEREOF, the parties have executed or caused this Agreement to be executed as of the date first above written.

(Jim Guy Tucker)

(William J. Marks, Sr.)

CABLEVISION MANAGEMENT, INC.

By _____
Its: President

COUNTY CABLE LIMITED PARTNERSHIP
BY CABLEVISION MANAGEMENT, INC.,
Its General Partner

By _____
Its: President

BEEBE CABLEVISION PARTNERSHIP
BY CABLEVISION MANAGEMENT, INC.,
Its General Partner

By _____
Its: President

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FLEET NATIONAL BANK,
Individually and as Agent

By_____
Daniel P. Williams, Vice President

STATE STREET BANK AND TRUST COMPANY

By_____
Craig P. Russ, Loan Officer

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EXHIBIT "B"

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CABLE VISION MANAGEMENT INC.
First Commercial Bank Building
Suite 1700
Little Rock, Arkansas 72201

September 15, 1987

PERSONAL & CONFIDENTIAL

Mr. William J. Marks, Sr.
3501 N. MacArthur Blvd., Suite 406
Irving, Texas 75062

199-00091029

Dear Bill:

This letter constitutes a demand by Cablevision, Inc. ("CMI") and Jim Guy Tucker as fifty percent shareholder of CMI, that the stock transactions of June 10, 1987 related to the merger of Planned Cable Systems Corporation ("PCS") and CMI be rescinded. This demand is made pursuant to Ark. Stat. Ann. § 67-1256 and should entitle CMI, at a minimum, to a return of the consideration paid for the PCS stock, plus six percent interest, plus damages and attorney's fees.

At the time CMI and PCS agreed to merge, neither you nor PCS had disclosed the existence of a purported stock purchase agreement between you, PCS and Michael Starks. You have explained to me that you and Starks had agreed only to a profit-sharing arrangement related solely to the PCS assets which existed at the time I agreed to purchase the PCS debentures and stock from Meredith Corporation. At that time, those assets consisted only of the Trophy Club, Roanoke, and Plantation cable operations plus some assorted other minor properties.

Based on that representation, and the understanding that PCS had only two shareholders, CMI undertook to merge with PCS. CMI serves as a general partner of County Cable Limited Partnership ("CCLP") and, in that capacity, holds franchises for the benefit of CCLP and has other ficuciary obligations to CCLP. CMI also serves as a general partner of a Florida limited partnership and has ficuciary obligations to that entity. CMI cannot be involved in a dispute which jeopardizes its role and duties as general partner of those partnerships.

In August of 1987 you made me aware that Starks had retained separate counsel and had a dispute with you over the nature of his "agreement". You also have provided me a copy of a letter from counsel for Mr. Starks in which litigation against CMI is threatened.

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199-00091030

One of the methods of relief Starks has suggested is to become a stockholder of CMI. He has specifically demanded that CMI transfer shares of CMI stock to him on CMI's books.

Having Mr. Starks as a shareholder of CMI is totally unacceptable to me. You know how strongly I feel about the poor performance of his duties essentially from the time I met him. I have no confidence in Mr. Starks. Mr. Starks has no independent financial capacity. Mr. Starks brings nothing "to the table" as a stockholder of this company. It would certainly be unacceptable for me to have him involved in a company which I owned 100% of prior to my agreement to enter into this transaction with you.

Starks' demand and the continuing dispute between you, Starks and CMI raises enormously serious problems for CMI.

For example, CMI and I have made representations to banks that there are no other stockholders in CMI and that there are no adverse claims to the stock or ownership of CMI or its assets. We have major loans scheduled to close in early October plus enormous commitments to purchase other stock and assets which are dependent upon my being able to truthfully represent that there are no such disputes that have arisen since our last loan was made.

Disclosure of this dispute could prevent loan closings and create defaults. Non-disclosure of this dispute could be a serious breach in loan agreements. In view of the fact that you cannot resolve this matter as you had expected, I believe that it is critical for CMI to extricate itself from the merger, Starks' claims, and Starks' disputes with you.

As a result, I have asked independent counsel for CMI to advise CMI and me on the steps necessary to rescind the CMI/PCS merger. To further evaluate this problem, we will need to detail the liabilities which CMI has incurred which are related solely to the PCS assets in order to determine how to balance accounts. You and I also have some shareholders' agreements which could be affected.

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199-00091031

Our goal should be to get everyone back to pre-merger status so that Starks can have his rights (if any) determined without jeopardizing our ability to operate, borrow funds, and continue in our ordinary course of business.

The major problem I envisage is the $8.5 million debenture liability which PCS has. How is PCS going to be able to pay that debenture? We cannot borrow on PCS or PCS assets with this dispute going on. Neither CMI nor I can simply carry the debentures until the dispute is resolved. This is, obviously, an extremely urgent matter and I ask your immediate cooperation and attention to this issue so we can attempt to resolve it very, very quickly.

Very truly yours,

Jim Guy Tucker,
Chairman

JGT:mdf

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EXHIBIT "C"

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AGREEMENT OF MODIFICATION, CONSENT AND CONFIRMATION OF SECURITY

THIS AGREEMENT made as of this 1st day of October, 1987, by and among JIM GUY TUCKER (Tucker") and, WILLIAM J. MARKS, SR. ("Marks"); CABLEVISION MANAGEMENT, INC. ("CMI"), COUNTY CABLE LIMITED PARTNERSHIP ("CCLP"); BEEBE CABLEVISION PARTNERSHIP ("Beebe"); FLEET NATIONAL BANK ("Fleet"); and STATE STREET BANK AND TRUST COMPANY ("SSB")

RECITALS

1. Tucker and Marks (together, the "Borrower") and Fleet and SSB (together, the "Lenders") entered into a Demand Line of Credit Agreement dated as of June 10, 1987 (as heretofore and hereafter amended, the "Loan Agreement").

2. In connection with the original execution and delivery of the Loan Agreement, Fleet, as Agent for the Lenders (the "Agent"), is a party with each of the Borrower and CMI to a Security Agreement of even date therewith (as amended from time to time, the "Security Agreements"); the Agent is a party with each of CMI and the Borrower to a Conditional Assignment of an Agreement for Purchase and Sale of Assets of even date therewith (as amended from time to time, the "Conditional Assignments"); the Agent is a party with Tucker and CMI and with CMI and CCLP to a Collateral Assignment and Pledge of Partnership Interests of even date therewith (as amended from time to time, the "Pledge Agreement"); the Agent and the Borrower are parties with CMI, CCLP and Beebe to Subordination Agreements of even date therewith (as amended from time to time, the "Subordination Agreements"); CMI is a party to a Guaranty in favor of the Lenders of even date therewith (as amended from time to time, the "Guaranty"). The Security Agreements, the Conditional Assignment, the Pledge Agreements, the Subordination Agreements, the Guaranty and all other Security Documents (as defined in the Loan Agreement, as originally executed and delivered) executed by any of the parties hereto in connection with the Loan Agreement are sometimes hereinafter referred to collectively as the "Security Documents".

3. Contemporaneously herewith, subject to certain terms and conditions, (a) the Lenders have agreed to increase the Lines of Credit under the Loan Agreement pursuant to a Letter Agreement of even date herewith between the Lenders and the

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Borrower amending the Loan Agreement (the "Amendment Agreement") and pursuant to the Amended Notes (as defined therein) and any and all promissory notes issued in replacement of thereof from time to time by the Borrower to the Lenders and (ii) Fleet is issuing its Letter of Credit in the amount of $399,000 for the Borrower's account and on behalf of Steve Hansen, Max Hooper and George Hayes (the "Letter of Credit"), in which Letter of Credit SSB will purchase a participation on a pro rata basis and in respect of which SSB will receive its pro rata share of all fees (all of the foregoing, as described in this paragraph 3, being hereinafter collectively called the "Lender Obligations").

4. As a condition to Fleet's willingness to issue the Letter of Credit and SSB's willingness to purchase its participation therein and the Lenders' willingness to enter into the Amendment Agreement and increase the Lines of Credit, the Borrower, CMI, CCLP and Beebe (the "Borrower Group") are entering into this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each of the parties hereto, the parties hereby agree as follows:

1. Consent. To the extent required, if any, CMI, CCLP and Beebe hereby consent to the execution, delivery and performance by the Borrower of the Amendment Agreement and the consummation of all of the transactions contemplated therein.

2. Supplements to Exhibits. Concurrently herewith, the Borrower Group is supplementing the original Exhibits and Schedules to the Security Documents (the "Supplements"), as provided in Exhibit A attached hereto, to indicate any changes to such original Exhibits and Schedules since the date thereof, after giving effect to the transactions contemplated in the Amendment Agreement. The Borrower Group hereby represents and warrants to the Lenders that all of the information contained in the Supplements is true and correct on and as of the date hereof.

3. Confirmation of Security. Each member of the Borrower Group (but, with respect to CCLP, only as to the Subordination Agreement to which it is a party), hereby confirms and agrees that the Lender Obligations and all other obligations of the Borrower to the Lenders shall constitute "Obligations" or "Guaranteed Obligations" or "Bank Indebtedness", as the case may be, for all purposes of the Security Documents and, howsoever defined, shall be secured by and entitled to all of the benefits of the Security Documents.

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4. General. This Agreement may be executed in any number of counterparts, which shall together constitute an entire original agreement, shall be construed in accordance with and governed by the laws of the State of Rhode Island and shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

IN WITNESS WHEREOF, the parties have executed or caused this Agreement to be executed as of the date first above written.

(Jim Guy Tucker)

(William J. Marks, Sr.)

CABLEVISION MANAGEMENT, INC.

By _____
Its: President

COUNTY CABLE LIMITED PARTNERSHIP
BY CABLEVISION MANAGEMENT, INC.,
Its General Partner

By _____
Its: President

BEEBE CABLEVISION PARTNERSHIP
BY CABLEVISION MANAGEMENT, INC.,
Its General Partner

By _____
Its: President

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FLEET NATIONAL BANK,
Individually and as Agent

By_____
Daniel P. Williams, Vice President

STATE STREET BANK AND TRUST COMPANY

By_____
Craig P. Russ, Loan Officer

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EXHIBIT "D"

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CONDITIONAL ASSIGNMENT

Jim Guy Tucker ("Tucker") and William J. Marks, Sr. (collectively, the "Assignors"), for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby sell, assign and convey to Fleet National Bank ("Fleet"), for itself and as agent for State Street Bank and Trust Company ("SSB", Fleet and SSB being collectively referred to as the "Lenders" and Fleet, in its capacity as agent for the Lenders, being referred to as the "Agent"), as collateral to secure all of the Assignor's indebtedness, obligations and liabilities to the Lenders under that certain Demand Line of Credit Agreement of even date herewith between the Assignors and the Lenders (as amended from time to time, the "Loan Agreement") and any and all promissory notes, instruments and documents executed in connection therewith (collectively the "Obligations"), all of the Assignor's right, title and interest in and to that certain Stock Purchase Agreement dated March 1, 1987 between Jim Guy Tucker and Meredith Corporation (the "Seller"), as amended through the date hereof (such Stock Purchase Agreement, as so amended, being hereinafter referred to as the "Purchase Agreement"), together with all claims, monies, rights, powers, privileges, remedies, options, deposits and benefits of the Assignors thereunder, including, without limitation, together with full power and authority in the name of the Assignors or otherwise, to enforce, collect, receive or receipt for any or all of the foregoing.

Section 1. Representations and Warranties. The Assignor represents and warrants that:

(a) The Purchase Agreement is in full force and effect, is a valid and binding obligation enforceable in accordance with its terms, and neither Tucker nor, to the Assignors' knowledge, the Seller is in default in any material respect in the performance of its obligations thereunder.

(b) A complete and accurate copy of the Purchase Agreement, as in effect on the date hereof, has been previously delivered to the Agent.

(c) The Assignors have not assigned or otherwise transferred the Purchase Agreement or any of the rights hereby assigned to anyone other than the Agent, nor has it consented to any assignment of the Purchase Agreement by the Seller.

Section 2. Covenants. The Assignors covenant and agree that:

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(a) They will not waive, amend, modify or otherwise change any material provision of the Purchase Agreement, or supplement in any material respect or terminate the Purchase Agreement, without prior written notice to the Agent and, unless any such waiver, amendment, modification, change, supplement or termination is required by applicable law or ordinance or by applicable rule or regulation of a governmental authority, without the prior written consent of the Lenders, which shall not be unreasonably withheld or delayed.

(b) They will, at any time and from time to time upon the request of the Agent or the Lenders, promptly and duly execute and deliver such further documents and instruments and do such other acts and things as the Agent or the Lenders may request in order fully to effect the purposes of this assignment and to provide the full benefits of this assignment to the Agent to the extent that any such act or thing does not affect Tucker's obligations contained in the Purchase Agreement.

(c) They will promptly notify the Agent of any failure by the Seller to perform or observe in any material respect any of its obligations contained in the Purchase Agreement, any alleged failure by Tucker to perform or observe in any material respect any of its obligations in the Purchase Agreement, or any material dispute between the Seller and Tucker arising out of the Purchase Agreement, and will promptly deliver to the Agent copies of all correspondence and other documents sent or received by it in connection with any of the foregoing.

(d) They will not, without the prior written consent of the Lenders, which consent will not be unreasonably withheld, consent to the assumption by any other person of the Seller's obligations under the Purchase Agreement.

(e) So long as this assignment remains in effect, they will not further assign or otherwise transfer any of their right, title and interest in, to and under the Purchase Agreement to any other person, provided that nothing herein shall be deemed to preclude the Seller from exercising any rights it may have against Tucker in the event Tucker breaches any obligation or representation contained in the Purchase Agreement.

Section 3. Mutual Agreements. The Assignors and the Agent agree that:

(a) Tucker shall at all times remain liable to the Seller under the Purchase Agreement to perform all of his obligations thereunder to the same extent as if this assignment had not been entered into.

(b) The Agent shall have no obligation or liability under the Purchase Agreement by reason of, or arising out of, this assignment or be obligated to perform any of the obligations of

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Tucker thereunder or to make any payment or to make any inquiry of the sufficiency of any payment received by the Lenders or to present or file any claim or to take any other action to collect or enforce any claim for any payment assigned hereunder.

(c) So long as Tucker is not in default under this Agreement, Tucker, to the exclusion of the Agent, is authorized to exercise in his own name all right and powers of Tucker under the Purchase Agreement and to retain any recovery or benefit resulting from the enforcement of any indemnity or other rights under the Purchase Agreement.

(d) Upon the payment in full of all Obligations to the Lenders, this assignment shall be null and void and the Assignor shall have and enjoy their rights under the Purchase Agreement to the same extent as if this assignment had not been executed, and, at Tucker's request and expense, the Agent shall reassign to Assignors, in form and substance satisfactory to the Assignors, the Purchase Agreement and execute such other documents as may be necessary or desirable to give effect to such reassignment.

Section 4. Default. The Assignors shall be in default under this Agreement upon any failure to pay when due any amount owing the Loan Agreement or any notes issued pursuant thereto.

IN WITNESS WHEREOF, the Assignors have executed this assignment as of June 10, 1987.

(William J. Marks, Sr.)

(Jim Guy Tucker)

The foregoing Conditional Assignment is hereby accepted and agreed to as of the above date.

FLEET NATIONAL BANK, for itself as agent for State Street Bank and Trust Company

By_____
Mary E. Gooding, Vice President

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Tucker thereunder or to make any payment or to make any inquiry of the sufficiency of any payment received by the Lenders or to present or file any claim or to take any other action to collect or enforce any claim for any payment assigned hereunder.

(c) So long as Tucker is not in default under this Agreement, Tucker, to the exclusion of the Agent, is authorized to exercise in his own name all right and powers of Tucker under the Purchase Agreement and to retain any recovery or benefit resulting from the enforcement of any indemnity or other rights under the Purchase Agreement.

(d) Upon the payment in full of all Obligations to the Lenders, this assignment shall be null and void and the Assignor shall have and enjoy their rights under the Purchase Agreement to the same extent as if this assignment had not been executed, and, at Tucker's request and expense, the Agent shall reassign to Assignors, in form and substance satisfactory to the Assignors, the Purchase Agreement and execute such other documents as may be necessary or desirable to give effect to such reassignment.

Section 4. Default. The Assignors shall be in default under this Agreement upon any failure to pay when due any amount owing the Loan Agreement or any notes issued pursuant thereto.

IN WITNESS WHEREOF, the Assignors have executed this assignment as of June 10, 1987.

_____
(William J. Marks, Sr.)

_____
(Jim Guy Tucker)

The foregoing Conditional Assignment is hereby accepted and agreed to as of the above date.

FLEET NATIONAL BANK, for itself as agent for State Street Bank and Trust Company

By _____
Mary E. Gooding, Vice President

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Consent of Seller

The undersigned hereby consents to the foregoing Conditional Assignment as of the above date.

MEREDITH CORPORATION

By _____
Vice President-Finance

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EXHIBIT "E"

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11:30 a.m.
Mike Mack
Van Olivier
J.M. Zucker

PCS had no debt when JMJ acquired it.
Needed to finance it
JMJ would loan more $.

JMJ has 1st lien.
Wants to be paid.
No new $.

PCS cash flow semi negative.
Lost $650,000

$ to JMJ tied ahead for PCS - now LMS
(a decision expected to make in next week)
LMS will be left w
P. Computation
Roanoke
Trophy Club
Las Brisas
Projected capital needs for next 12 mos.
cash shortfall " " " .

Jim Marks could testify about non-compete agreement + valuation. Expert witness.

I/ whether to disclose the prospect of sale to Americas. Problem: my American knowledge of Stanley problem would kill the deal.

JMJ: will draft H on pending sale.

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In matter

NEW VENUE: Wichita Falls

CMI — Van's not sure who cred
O.I.T. — cons, cr checks accounts, etc
Betty working on

Reason there aren't any more cred.'s?

Meredith corp., mobile O, provided all f/s cash. Meredith sold to 9 of 7, 9 of 7 dsd it for acquisition, but won't willing to any more.

CMI's loan adv. $ to pay payable. Will do it post 12-31-17.

Schedule for debenture p.i. Financials will be through 10-31-17.

VAN: Dallas Houston
San Antonio Fw.

Trying to get cases out of bankruptcy before Meredith deal closes.
(1) Bankruptcy overcrowded
(2) Holidays
(3) Last massive case; won't attract Judges attn.
(4) Normal notice rights — 20 days, 25 days } two provide can run concurrently

TC (2.14) MT

Judge in Eastern District won't setting anything after Dec. 16th. Late approved orders not entered for a month before ending.

Wichita Falls — J. Gillaspy — Good guy. Has little to do. Little publicity. Might expedite it - Wichita Falls. Emergency hearing →

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May [illegible] to take the hospitality [illegible]
out of necessity [illegible]

[illegible] (c) (d) + (e) + 14 [illegible]

out + [illegible] part of a 2d docu-
ment.

Grew will endorse the [illegible] in lieu of the part of the
receipt.

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GONE 1:00 - 1:30
Ch. Matthews

Matter to determine when if conf hearing can be set. Ice Officials' finding + website. Julie help us.

Still finding records linked to get it back this way. Reduction want to pursue rec remedies.

Need to execute CMS - PCS articles of merger. Filing in Da + Dr.

PCS ——— merger ——→ CMS

CMI
Stone

Conviction — Marks property

Phil McClelland: written demand to put Marks work in Florida name.

MARKS

Trophy Club
Marks

Conviction
Landed in Hell

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EXHIBIT "F"

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ARNOLD, GROBMYER & HALEY
A PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW
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(901) 323-9300

LOVE FIELD BUILDING
SUITE N113, BOX 11
DALLAS, TEXAS 75235
(214) 358-4003

November 13, 1987

Jim Guy Tucker
Mitchell, Williams, Selig,
& Tucker
1000 Savers Federal Building
Little Rock, Arkansas 72201
(By Hand Delivery)

J. Van Oliver, Esq.
Andrews & Kurth
4400 Thanksgiving Tower
Dallas, Texas 75201
(By Federal Express)

Steve Feldman
Suite 406
3501 N. McArthur Blvd.
Irving, Texas 75062
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William J. Marks, Sr.
Suite 406
3501 N. McArthur Blvd.
Irving, Texas 75062
(By Federal Express)

William J. Marks, Jr.
Suite 406
3501 N. McArthur Blvd.
Irving, Texas 75062
(By Federal Express)

Gentlemen:

Enclosed herewith please find a very rough initial draft of the schedules and statement of affairs in the proposed Chapter 11 filing for Landowners Management System, Inc. I have attempted to compile information from notes of our meeting last weekend, as well as brief conversations with each of you. As can be ascertained from certain notations on the draft, I am still awaiting information as to some of the answers to the statement of affairs, as well as figures on the schedules, however, I think this is a good start. We have not yet determined the figures relating to inventory or machinery, fixtures, equipment and supplies. If any of you can fill

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in details on any of the omitted information, please do so and return a copy of the statement of affairs and/or schedules to me at your earliest convenience. I am sure we will be meeting in person or on the phone early next week to discuss these documents, as well as the plan and disclosure statement which I have just received from Van Oliver.

Also enclosed herewith please find John Raley's draft of the Management Agreement by which CMI is operating the systems for PCS and now, LMS.

Thank you for your assistance and continued cooperation.

Yours very truly,

ARNOLD, GROBMYER & RALEY

James F. Dowden

JFD/sw
Enclosures

253-00000164

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Management Agreement

This Agreement is entered into as of June 10, 1987.

Cablevision Management, Inc. (hereinafter to be referred to as "CMI") in order to assist Planned Cable Systems Corporation (hereinafter referred to "PCS") and its assigns in the plan of rescission will continue to manage the cable systems and hold title to the franchises subject to the directions of PCS and to the terms of the plan.

CMI will be responsible for all payables and other obligations except:

_____

_____

The negative cash flow resulting from operations and capital construction will be a credit to which CMI will be entitled on amounts due from CMI to PCS and its successors in interest in the purchase of assets pursuant to the Chapter 11 plan of arrangement.

CABLEVISION MANAGEMENT, INC.

By: _____

PLANNED CABLE SYSTEMS CORPORATION

By: _____

253-00000165

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EXHIBIT "G"

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CERTIFICATE

I, Secretary of Cablevision Management, Inc., hereby certify that the attached Memorandum of and Consent to Action by Shareholders and Board of Directors of Cablevision Management, Inc., contains a true and correct copy of the Resolutions adopted by Cablevision Management, Inc., on this 30th day of September, 1987.

Secretary

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MEMORANDUM OF AND CONSENT TO ACTION
BY BOARD OF DIRECTORS
AND SHAREHOLDERS
OF
CABLEVISION MANAGEMENT, INC.

The undersigned make this Memorandum of and Consent to Action by the Board of Directors and Shareholders to be placed in the corporate minute book in lieu of formal meeting this 30th day of September, 1987. By signature below, each member of the Board and each shareholder consents to the action taken informally in respect to this matter and approves the actions set forth below:

WHEREAS, this Corporation has agreed to act as Guarantor for the $8,500,000 Demand Line of Credit Agreement, dated June 10, 1987 (the "Loan Agreement"), among Fleet National Bank, for itself, and as agent for State Street Bank and Trust Company, (collectively the "Lenders"), Jim Guy Tucker and William J. Marks, Sr.; and

WHEREAS, that Line of Credit is being increased to $7,940,000 by Fleet National Bank and $5,460,000 by State Street Bank & Trust Company (the "Lender"); and

WHEREAS, in connection therewith the Lender requires this corporation to execute certain documents including an Agreement of Consent, Modification and Confirmation of Security.

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NOW, THEREFORE, BE IT:

RESOLVED, that the President and any Vice President of this Corporation be, and each of them acting singly hereby is, authorized in the name and on behalf of this Corporation to execute and deliver the Agreement of Consent, Modification and Confirmation of Security, and any other agreements, documents and instruments authorized in the preceding resolutions, said agreements, documents and instruments to be substantially in the form annexed hereto with such additions or changes thereto as may be required by the Lenders or as any such officer may, in his discretion, deem to be the best interest of this Corporation in connection with the transactions contemplated by the Loan Agreement and Modification; and that the President and any Vice President be, and each of them acting singly hereby is, authorized to execute and deliver on behalf of this Corporation all such further agreements, documents and instruments and to take all such further action as may be necessary or desirable to carry out the foregoing resolutions and transactions contemplated thereby.

FURTHER RESOLVED, that the President and any Vice President of this corporation be, and each of them acting singly hereby is, authorized to execute the Agreement of Consent, Modification and Confirmation of Security, and any

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and all other documents and take any and all acts in any way related to the transactions contemplated by the Loan Agreement and Modifications thereto, including without limitation, the borrowing of funds, the execution of promissory notes and the granting of security to the Lenders.

FURTHER RESOLVED, that the execution and delivery by the President and any Vice President of this Corporation of any of the aforesaid agreements, documents and instruments authorized in the preceding resolutions, and the taking by any such officer of any acts in any way relating to these transactions shall be conclusive evidence of the approval thereof by the Board of Directors and Shareholders of this Corporation and of his authority to execute and deliver and take the same in the name and on behalf of the Corporation.

FURTHER RESOLVED, that the Lenders and their successors and assigns are hereby authorized to rely upon these resolutions, and any certificate of the Secretary of this Corporation with respect thereto, until receipt of actual written notice of the revocation thereof.

BOARD OF DIRECTORS:

Jim Guy Tucker

William J. Marks, Sr.

Betty Tucker

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SHAREHOLDERS:

William J. Marks, Sr.

Jim Guy Tucker

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FILE

IN THE CIRCUIT COURT OF PULASKI COUNTY, ARKANSAS

00 FEB 16 AM 11: 29

CAROLYN STALEY
CIRCUIT COUNTY CLERK

JAMES A. NEAL, AS EXECUTIVE DIRECTOR OF THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT — PLAINTIFF

VS. — NO. CIV 99-11279

JOHN H. HALEY — DEFENDANT

ORDER GRANTING PLAINTIFF'S MOTION TO DISMISS WITHOUT PREJUDICE

Came to be heard this 15th day of February, 1999, the plaintiff's motion to dismiss without prejudice pursuant to Rule 41(a) of Arkansas Rules of Civil Procedure as evidenced by the plaintiff's counsel's signature below. This Court thereby dismissing this action without prejudice this date.

IT IS SO ORDERED.

Judge Chris Piazza, Circuit Judge

Date: 2-16-2000

Lynn Williams, Plaintiff's Counsel

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BEFORE THE SUPREME COURT COMMITTEE ON PROFESSIONAL CONDUCT

IN RE: **John H. Haley**
Ark. Bar ID No. 55014
CPC Docket No. 99-072

AFFIDAVIT

STATE OF ARKANSAS)
) ss.
COUNTY OF _____)

TO: THE STATE OF ARKANSAS BAR RULES COMMITTEE

RE: MATTER OF JOHN H. HALEY

The undersigned, John H. Haley, after being duly sworn, on oath states:

RESPONSE TO SPECIFIC ALLEGATIONS OF THE COMPLAINT

ALLEGATION NO. 1: *On February 24, 1998, the records of the United States District Court for the Eastern District of Arkansas reflect that you entered a plea of guilty to a one count information. The information alleged that you aided and abetted others in the willful failure to supply information to the Internal Revenue Service, a violation of 25 U.S.C. §2, a Class A misdemeanor. This Complaint, based upon your conduct, as well as the conviction, is directed to you as a formal disciplinary complaint pursuant to Section 5E(1) of the Procedures of the Arkansas Supreme Court Regulating Professional Conduct of Attorneys at Law, as revised January 15, 1998 (hereinafter referred to as "the Procedures").*

RESPONSE: This statement is incorrect. I did plead guilty to a single count misdemeanor. The charge was that I aided and abetted Frost & Company (herein "Frost") in providing an Asset Transfer Agreement and an Order Approving Disclosure Statement and Confirming the Plan of Reorganization (herein "Order") knowing that they were not a complete disclosure of all pertinent facts. This offense was technical in nature, since other documents provided the I.R.S. completed the picture and left no salient fact undisclosed.

ALLEGATION NO. 2: *The background which ultimately led to the entry of the Judgment of Conviction entered August 25, 1998, is as follows:*

In June, 1987, Jim Guy Tucker purchased stock in Planned Cable Systems (PCS). In August, 1987, Jim Guy Tucker sold one of the assets of PCS, namely, a cable system

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located in Plantation, Florida, for $15 million dollars. It was determined that the sale of the Plantation, Florida cable system would generate approximately Four million dollars in tax to PCS.

RESPONSE: These statements are incorrect. Tucker did not purchase the stock. He and Bill Marks purchased a Nine Million Dollar note for Six Million Dollars, secured by cable assets, and the seller also delivered 82% of the company stock. The sale of the major asset took place in January of 1988, after the cable assets were transferred in lieu of foreclosure in payment of the Nine Million Dollar Note. The sale was for $11,750,000.00, subject to Tucker paying certain costs and debts of up toward Two Million Dollars, and an additional payment of Three Million Dollars to Marks for a covenant not to compete.

No one determined with any exactitude what the tax ramifications were, but Tucker paid more than One Million Dollars taxes on the sale profits, and presumably, Marks paid or owed the same amount, or more, for his noncompete payments. The guess about tax was in the form of a memo from a Dallas accounting firm, nearly six months before the sale, and without taking into account costs of sale, ongoing expense and losses, and loss carry forwards of the corporation. However, the OIC continues to say the tax would have been many millions. The Friday Law Firm has calculated that there was no cost to the government in structuring the sale as was done. I have not personally done a computation, then or now. I leave that for the accountants.

ALLEGATION NO. 3: *Jim Guy Tucker, William Marks and yourself (all co-defendants charged in the original indictment, supra,) constructed a series of financial and corporate transactions which were either fraudulent or contained misleading information. This ultimately led to the fraudulent filing of a prepackage bankruptcy in which Jim Guy Tucker, your client, was the sole creditor. You knowingly allowed a false and incomplete disclosure statement to be filed which did not completely disclose the history of PCS or its true ownership. The disclosure statement did not disclose the relationship of the debtor in the bankruptcy to Landowners Management Systems (LMS) with the Fleet Bank and it did not disclose the existence of a binding and valid sales agreement for the Plantation, Florida cable TV system between Cablevision Management, Inc. and the buyer in Florida. Your fee for your services was in excess of $100,000.00.*

RESPONSE: These statements are generally false. Tucker and Marks had a series of very complicated financial and commercial transactions, assisted by professionals who were paid around $450,000.00 for their services, including $100,000.00 paid to my law firm. After allocations to the other lawyers and overhead, I personally benefited to the extent of less than $50,000.00. There was no fraudulent filing of a prepackaged bankruptcy petition, which was prepared and done by the clients and by bankruptcy counsel who were paid more than $25,000.00 for their services. They included James F. Dowden, who was then with the firm of Arnold, Grobmyer and Haley, and Van Oliver, with Andrews and Kurth of Dallas, Texas. The disclosure statement did indeed reflect the role of Landowners Management Systems, the bankrupt. Fleet Bank was not a

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creditor of the bankrupt, although it had a lien on some of its assets. The Florida sale was not disclosed, for various reasons, including that the sale was from Tucker, not the bankrupt, and only Tucker, not the bankrupt. could provide the consideration and value bargained for by the buyer. In any case, that decision was not mine to make.

These allegations continue to concern themselves with a felony count which was dismissed. I was not guilty of that charge. I did not and would not plead guilty to that charge (and, in fact, refused to do so over a course of about two years of negotiations before the charge was ultimately dismissed). It would seem that I am being placed on trial for those matters. Be that as it may, I do not hold myself out as an expert in bankruptcy matters. I was not involved in the preparation of the bankruptcy documents which are in question. I was not involved in the majority of the financial and corporate transactions mentioned in the Complaint. Those in which I was involved did not contain misleading information. I did not "allow" any petition to be filed or any court to approve such. Tucker held a note. He foreclosed. He elected to do so through bankruptcy. This is a common practice. He sold the assets and paid taxes on the difference between his cost and his gain. There were other creditors. All were paid in full. Fleet Bank was paid in full.

ALLEGATION NO. 4: *Subsequently, the Internal Revenue Service audited Cablevision Management, Inc. You and Jim Guy Tucker were requested to provide information about the bankruptcy and the ownership of the corporate entities involved. You aided and abetted Jim Guy Tucker in providing information to the Internal Revenue Service which you knew was false and incomplete, i.e. Asset Transfer Agreement and an Order Approving Disclosure Statement and Confirming the Plan of Reorganization.*

RESPONSE: This allegation is false. In fact, in 1990 and 1991, the IRS agents spent 126 hours auditing the returns of Tucker and Cablevision Management, Inc. The auditors were furnished with thousands of pages of documentation, which gave all pertinent information at their disposal, so that a thorough audit could be performed and any questions laid to rest. The Asset Transfer Agreement and the Order were provided in the same form as were prepared by James Dowden and Van Oliver. The other information provided filled in any blanks, including the pending sales agreement for the Florida system, and the loan arrangements with Fleet Bank. Indeed, the auditors had in their possession the minutes of the corporation wherein was attached the Fleet agreements setting out the banking relationships and the pending sale of the Florida system. There was nothing kept from the I.R.S. which would conceal or obfuscate the facts connected with the bankruptcy, the foreclosure and the sale.

ALLEGATION NO. 5: *On June 7, 1995, you, John H. Haley, an attorney practicing in Little Rock. Pulaski County, Arkansas, were charged in Count III of a three count federal indictment along with Jim Guy Tucker and William Marks, Sr. The indictment was filed in the United States District Court for the Eastern District of Arkansas, Case No. LR-CR-95-117. The indictment was brought by Kenneth W. Starr of the Office of Independent Counsel. It alleged a violation of 18 U.S.C. §371, conspiracy to defraud the United States, or its agencies, a felony.*

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RESPONSE: Admitted. The charge has been dismissed.

ALLEGATION NO. 6: *On February 20. 1998, you entered into a plea agreement with the Office of Independent Counsel. In return for the dismissal of Count III of the indictment, you agreed to plead guilty to a Class A misdemeanor as charged in a one count Information. The possible punishment for the misdemeanor is up to one year in prison, a fine not to exceed $25,000.00; and $25.00 special assessment; and any restitution as ordered by the Court.*

On February 24, 1998, before the Honorable Stephen M. Reasoner, United States District Court Judge, you pled guilty to the Information. When Judge Reasoner inquired as to your response to the Independent Counsel's statements of facts supporting your guilty plea, you stated:

> *". . . (you) Participated in providing documents to the accounting firm which was assisting in the audit. And in that connection, the documents that were presented included the Asset Transfer Agreement and the Order Approving the Disclosure Statement and confirming Plan of Reorganization. Those documents were – did not supply the complete and accurate information which could have been provided to the Internal Revenue Service agents who were doing the audit. Namely, that the loan agreement with Fleet National Bank was not a part of those documents, the accurate history and ownership of the Planned Cable Systems was not described therein, and the agreement to sell Plantation Cable to American Cablesystems was not a part of those documents."*

Judge Reasoner then asked, ". . . Did you do that with knowledge that they were not complete and they were inaccurate?" You replied, "Yes sir, I did." Judge Reasoner asked, "Did you aid and abet others that you know were willfully failing to supply information?" You replied, "Yes sir, I knew the information that was supplied was incomplete" Judge Reasoner then asked, "And that's what they were intending to do, was to supply incomplete information. You knew that?" Your response was, "Yes Sir."

On August 24, 1998, Judge Reasoner conducted a sentencing hearing. The United States Sentencing Guideline calculation authorized an imprisonment guideline range of 12 months, supervised release of not more than one year, a fine range of $7,500.00 to $75,000.00 with restitution of $40,000.00. In accordance with a 5K1.1 motion by the Independent Counsel, Judge Reasoner instead, sentenced you to three years probation with the special condition that you perform eight hours of community service per week during the term of your probation; a $30,000.00 fine; $25.00 special assessment; and $40,000.00 restitution. Judge Reasoner found the total amount of loss to the Internal Revenue Service occasioned by your participation in the scheme to be $3,562,257.00.

RESPONSE: A plea agreement is in the nature of a contract. The possible consequences matter not. The agreement was for probation only, a fine, and agreed

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restitution of $40,000.00. A fine of $30,000.00 was levied, together with community service of $1,248 hours. That was later reduced to 648 hours, which has been substantially completed.

As to the February 24 hearing, note that I specifically stated that the documents presented did not supply the Fleet loan agreement, the history of the cable company or the agreement to sell the Florida cable systems. Those documents had been separately supplied, leaving no omission in giving a full and complete disclosure of pertinent facts to the I.R.S. The only offense I pleaded guilty to was knowing that one set of documents was incomplete; not that all of the information was not supplied entirely. When weighed against the clear, documented facts, the misdemeanor charged concerned a highly technical violation. In responding to questions posed by Judge Reasoner, I asserted no more than the foregoing.

Judge Reasoner did not find that I had "participated in a scheme". He did find that I was, indeed, guilty of the technical misdemeanor. He did not find that the I.R.S. suffered any loss as a result. The figure of $3,562,257.00 was provided by the OIC to the probation office, and was never discussed or made a part of the Judgment or findings. In fact, I was not made aware that that figure was included in the filed documents until this Complaint was filed.

ALLEGATION NO. 7: *From the information contained in the attached Exhibits and your change of plea hearing, the following violations of the Arkansas Model Rules of Professional Conduct (Model Rules) are alleged:*

A. Your conduct, collectively and singularly, violated Model Rule 8.4(b), to-wit:

1. You admitted to aiding and abetting others in the willful failure to completely and accurately describe the history and ownership of Planned Cable Systems; a loan agreement with Fleet National Bank and an Agreement to sell Plantation Cable to American Cable Systems to the Internal Revenue Service, resulting in a loss to that government agency in the amount of $3,562,257.00.

2. A Judgment of Conviction was entered of record finding you guilty of the federal criminal offense of willful failure to supply information to the Internal Revenue Service, Title 26, United States Code Section 2703 and Title 18, United States Code Section 2, a Class A Misdemeanor.

Model Rule 8.4(b) provides that it is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects.

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B. *Your conduct, collectively and singularly, violated Model Rule 8.4(c), to-wit:*

1. *You constructed a series of financial and corporate transactions which were either fraudulent or contained misleading information in behalf of Jim Guy Tucker to facilitate the filing of a prepackage bankruptcy.*

2. *You knowingly allowed a "prepackage bankruptcy" to be filed which was fraudulent, wherein Jim Guy Tucker was the sole creditor.*

3. *In the "prepackage bankruptcy" you allowed to be filed, you also allowed a Disclosure Statement to be approved by the bankruptcy court which either failed to contain necessary material facts or did contain fraudulent statements.*

4. *When the Internal Revenue Service requested information from you and Jim Guy Tucker due to an audit of Cablevision, you provided an Asset Transfer Agreement which you knew to be false or to contain incomplete information.*

5. *When the Internal Revenue Service requested information from you and Jim Guy Tucker due to an audit of Cablevision, you provided an Order Approving Disclosure Statement and Confirming the Plan of Reorganization that you knew contained either false information or incomplete information.*

Model Rule 8.4(c) requires that a lawyer not engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

RESPONSE: The conclusions drawn in the Complaint as to my conduct are not correct. I admitted only to aiding and abetting others in providing documents to the accounting firm representing Tucker in the audit that, in and of themselves, did not supply the complete and accurate information. All information was provided by other documents in the hands of the I.R.S. No finding was made by the Court as to monetary loss. No loss was discussed or proven, except for a bare unsubstantiated statement of a member of Starr's team who made the assertion that perhaps the loss was $3,500,000.00. The assertion is absolutely false, and in any case, related only to a dismissed felony count. First, no account is made of the net operating loss. Second, no credit is given for the taxes paid or owing by Tucker and Marks, exceeding Two Million Dollars. Third, there is no indication that the buyer would have paid the price, or even entered into the sales agreement, absent the separate consideration furnished by Tucker and Marks, namely, the covenants not to compete and the warranties backed by financial resources. Fourth, the "loss" has nothing to do with an I.R.S. audit where complete disclosure was made.

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Nothing in this factual situation or the plea of guilty to the misdemeanor reflects adversely on my honesty, trustworthiness or fitness as a lawyer. The basic planning was quite sound, and represented a method of solving multiple business problems which has been carried out many times in many jurisdictions.

The summation in part B, at the end of the Complaint is false. The financial and corporate transactions were neither misleading nor fraudulent. They were done by a battery of professionals: two accounting firms and six legal firms. There was no fraudulent prepackaged bankruptcy; and Tucker was one of several creditors. As to any disclosure statement, I did not draft the statement, did not participate in the decisions of inclusion or materials, and did not present it to the Court. The lawyers and the client who prepared the documents had good and sufficient reason for exclusion and inclusion of materials, in their legal opinion. I did not provide any information to the I.R.S. I simply knew of the presentation of the Asset Transfer Agreement and Order to the I.R.S. by Frost, but I also knew that other documentation filled out any open questions. The documents furnished were copies of the documents as prepared by the client, Tucker, Van Oliver and James Dowden.

My conduct, including the matters alleged to have occurred in 1987 in the dismissed Count III, and the matters alleged to have occurred in 1990 and to which I have pleaded guilty, do not reflect upon my honor or integrity as an attorney, and do not constitute conduct involving dishonesty, fraud, deceit or misrepresentation.

I. PROFESSIONAL BACKGROUND

I was graduated from the University of Arkansas School of Law in 1955, and after a year clerkship at the Arkansas Supreme Court, have been in the private practice of law in Little Rock since that time. I have no specialized training in any field, but have some expertise in real estate, lending, banking, corporate transactions, and taxation.

My law related service includes five years with the State Board of Law Examiners, as chairman for four of those years; five years on the State Board of Correction, Chairman for four of these; instructor at the Arkansas Law School teaching Contracts and Conflict of Laws; part time instructor of Business Law at the University of Arkansas; and C.L.U. instructor at the University of Arkansas at Little Rock.

During 1968-1970, I served as special counsel to the Arkansas Insurance Department during which time more than fifty insurance charters of submarginal companies were cancelled. Richard Arnold and I co-authored the comprehensive Arkansas Correction Code, which was enacted by the legislature in 1968. Together with A.F.House and Richard Butler, I represented the Little Rock School District in the Aaron v. Cooper case through which the schools in Arkansas were integrated. A new amendment to our Constitution, which finally settled the usury limits, was the result of my representation of the borrower in the Mack Trucks v. Arkansas Savings and Loan

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case. David Bogard and I worked with the State Parks and Tourism Department in the acquisition of land for what is now Pinnacle Mountain State Park.

My community work over the past several decades includes work with churches, boy scouting, political activist organizations. and local organizations whose purposes are charitable in nature.

II. THE MISDEMEANOR CONVICTION

In a negotiated plea, my attorneys and the office of Independent Counsel, drafted an "Information" charging me with knowingly allowing Frost & Co., an accounting firm, to provide the IRS agents with an order approving a disclosure statement and an asset transfer agreement which were filed in a bankruptcy matter, knowing that they were incomplete. This was furnished in connection with an audit of Tucker's personal return for 1988, wherein he disclosed the sale of the Florida system, and paid income taxes on the sale in excess of One Million Dollars. The audit took place in 1990 and 1991. I did plead guilty to that misdemeanor on February 24, 1998, and the Office of Independent Counsel agreed to dismiss all other charges and accusations against me. The objective of the OIC and myself was to dispense with a charge difficult for the government to present or prove, and costly and debilitating for me to defend. We agreed to a technical misdemeanor, not involving falsehood, dishonesty or fraud, since the information gaps were filled with other documents already in the hands of the I.R.S.

In fact, the documents to which the information referred do not mention that in November, 1987, at the time of the filing of the bankruptcy petition, Tucker had negotiated for a sale of the Florida system. Nor do they mention that Fleet Bank was owed millions of dollars by Tucker and Marks, secured by the Florida assets.

As mentioned, the furnishing of documents did not mislead the IRS in any respect, nor did I intend for it to be misleading. The IRS auditors had been furnished thousands of pages of documents which, more than two years after the fact, spelled out all pertinent facts. My instructions to Frost & Co. were to make a total disclosure of all facts, so that the audit would be as thorough as possible. The disclosure statement was supplied to Frost & Co. in the same form as prepared by Van Oliver of Andrews and Kurth, Jim Dowden of our firm, and Jim Guy Tucker. The auditors were furnished with information that Tucker and Marks later became partners in all other cable ventures. The IRS auditors were provided with the minutes of stockholders and directors of Cablevision Management, Inc., which included the October, 1987, Fleet Loan agreement, whereby Fleet acknowledged that it had been apprised of the pending sale of the Florida system by Tucker, and required that at the closing Tucker pay Nine Million Dollars to Fleet to obtain its release of collateral. This document alone fills in any deficiencies in apprising the IRS of omissions in the Disclosure Statement. All facts and information regarding all transactions having anything to do with the transactions leading to, involved in, or connected with the subject bankruptcy, foreclosure and sale was supplied to the IRS. There was nothing kept from the IRS which would deter them from the complete truth of the transactions. Further, none of this information was obfuscated or denied to the IRS.

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This was a technical violation only. After over four years of emotional, physical and economic duress; I was offered an opportunity to cut short this ordeal, save at least $350,000.00 in trial expenses, and preclude any chance of an incorrect verdict. Because I was certain that, although the documents in question, documents that I was not involved in preparing, might have been incomplete. I knew that the IRS did receive the correct information via other avenues. I was able to answer Judge Reasoner knowing that I did not mislead the Bankruptcy Court, the IRS, or any party involved in these transactions.

An affidavit, with exhibits attached, of William Huffman, C.P.A., who conducted the audit on behalf of Tucker with the I.R.S., is attached as Exhibit "A".

Based upon all of the information available, and after 126 hours of studying documents, the I.R.S. agents approved the Tucker return as filed, with no significant changes other than a $30,000.00 unrelated adjustment.

III. OTHER ALLEGATIONS

The other allegations in the Complaint contains allegations which seem to be based primarily upon statements from assistants to Kenneth Starr, Independent Counsel, as to matters which they hoped to prove should they be forced to trial concerning the dismissed felony count. Early on, the O.I.C. attempted to paint the transaction as a "sham" or "fraudulent" bankruptcy. This stance was soon aborted, and the O.I.C. then attempted to base their case on various omissions from documents. I was not guilty and did not plead guilty to the felony charge which was dismissed. I did not deprive the IRS of information needed in its audit, and my actions did not deprive the IRS of any money.

This was a most complicated transaction. The trial was scheduled to take at least eight weeks. There were hundreds of thousands of pages of documents which were to be used as exhibits. And so, it is not surprising that the allegations of the Complaint are not accurate. I categorically deny these allegations.

In January of 1987, a meeting was held between Marks and Tucker. Tucker had been in the cable business in the suburbs of Little Rock with two companies: County Cable Limited Partnership (CCLP), composed of various passive partners and Tucker as manager, and his company, Cablevision Management, Inc. (CMI). CMI managed the operations. CMI had acquired a small cable company outside Dallas called "South Lake". It was not an economical unit. Tucker wanted to sell it to Marks' company, Planned Cable Systems (PCS), which was owned 82% by Meredith Corporation (Iowa), a public company which publishes *Better Homes and Gardens*. Marks, himself, owned the other 18% of PCS.

But, PCS had problems of its own. It was heavily in debt to Meredith, owing it about $9,000,000.00, evidenced by a Promissory Note secured by all assets, which was executed in 1985. Also, Marks was expansion-minded, and had unilaterally made the decision to overbuild Carrollton, Texas, spending about $400,000.00 on this effort. PCS,

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having no desire to expand, had charged him back with this expenditure and treated the asset as owned by Marks. And so, Marks suggested that, with his help, Tucker buy PCS. Tucker agreed.

By March of 1987, the agreements were in place. Tucker would acquire the Meredith Note, discounted down for $6,000,000.00 in cash at closing. Meredith would also transfer to Tucker its 82% stock ownership in PCS. Closing was to take place in June, 1987.

Marks and Tucker made their agreements, which were to merge PCS into CMI, which would own all of PCS' interests, plus Carrollton, plus all that Tucker and CMI owned at South Lake and around Little Rock, including all his interests in CCLP. It was contemplated that CMI would buy out the limited partners in Arkansas who were interested in selling. The shares of the merged entity would be owned 50/50 by Tucker and Marks. Marks would provide management for the operations and Tucker would handle the bank financing. A perceived value differential was recognized by the agreement to issue to Marks a Note from CMI for $1,100,000.00.

Tucker went to Fleet Bank of Providence, Rhode Island, who agreed to finance the venture with a lender partner, State Street Bank of Boston. It also agreed to provide working capital financing to Tucker and Marks, as well as a new loan facility to CCLP for approximately $4,500,000.00. The total would be about $13,000,000.00.

The documents contemplated that the Meredith Note for $9,000,000.00 acquired by Tucker would be contributed to the capital of CMI, but this was never actually carried out because the Mitchell Law Firm tax lawyers and the Texas firm of Gardere & Wynn, who were structuring the transaction, determined that there would be adverse tax consequences. All other matters were concluded. CMI and PCS were merged, with CMI as the survivor. Meredith received its $6,000,000.00 purchase price for the Note and shares. Marks got his $1,100,000.00 Note. Marks and Tucker got their equal shares.

June through October of 1987 were fairly traumatic months for Tucker, Marks and the cable businesses. Tucker negotiated the purchase of the limited partnership interests of the passive limited partners of CCLP. In late June or July, Marks disclosed to Tucker that he, Marks, had entered into a contract for himself and for Planned Cable Systems (unbeknownst to Meredith), promising Starks, the financial officer of PCS, one-sixth of the shares held by Marks in PCS, and one-sixth of any shares acquired by Marks through merger, consolidation or other permutation. Marks, Starks and the Meredith officers all had frequent meetings with Tucker in connection with their due diligence. None had indicated that there were any claims by anyone on the stock of the company. Marks explained that he did not consider it a problem because he and Starks had a verbal agreement by the terms of which Marks would pay Starks $160,000.00 from the proceeds of the first sale of assets in full satisfaction of any claims or obligations Starks might have under the contract.

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However, Starks left the employ of PCS in the summer of 1987, and sought legal advice from Strasberger & Price of Dallas. His lawyer advised Starks that he was entitled to one-sixth of Marks' shares in Cablevision Management and interest in CCLP, as well as one-sixth of the $1,100,000.00 Note which was issued to Marks by PCS at closing. Additionally, had the Meredith Note of about 9 Million Dollars been actually contributed to the capital of the company, then, under that theory, Starks would have been entitled to one-sixth of one-half of the appreciation in the stock resulting from that transaction. Like a virus, Stark's interest in the cable would spread to whereever Tucker and Marks became involved, starting with everything in Texas, Florida and carrying on through to all of the Tucker cable businesses in Arkansas. Based on the advice received, Starks instructed his attorneys to proceed to enforce his rights under the Marks/PCS contract-i.e. force the transfer to Starks of one-sixth of all assets received by Marks through the merger and consolidation and acquisition of interests. This situation threatened the priority of the Fleet Note. The Starks' problem was concealed by the Office of Independent Counsel from the Court and perhaps, the Grand Jury.

Other problems were being faced on the financial front. The fast-growing suburbs of Dallas were demanding cable service, and millions of dollars were being spent by CMI, Tucker and Marks to keep up with the demand. The new chief financial officer of the company, Steve Feldman, was handling his job with a high degree of incompetence. Feldman could not provide Tucker's auditors with information which would demonstrate that PCS was maintaining a current status on payment of Texas sales taxes, payment of franchise fees to the cities, payment of the pay services provided to the cable and payment of the federal withholding obligations. To the contrary, apparently, much of this was not being done. The books were a shambles, so much so that an audit of the books was simply impossible. Much later, we learned that Feldman, who was also the personal CPA for Bill Marks, was stealing large sums of money from Marks, estimated at more than $150,000.00 to as much as $300,000.00. Some years later, Feldman was charged and convicted of theft of funds from Marks and Marks' entities, but was not sentenced to prison. This may have been for medical reasons, as Feldman was ill. No mention of the Feldman situation was made to the Court, probably not to the Grand Jury by the O.I.C.

Also, during this same period, American Cable Company, which owned the Fort Lauderdale system, had entered negotiations with Tucker and Marks for the purchase of the PCS system at Plantation, Florida. The purchase price discussed, inclusive of covenants not to compete, was in the range of Fifteen Million Dollars. Because of the Starks situation, Tucker was adamant in his refusal to allow PCS to be a party to any sale of assets which were securing the payment of the Note Tucker had purchased from Meredith. But, he recognized the need for the sale of assets to reduce bank debt. Accordingly, negotiations proceeded until, in September of 1987, a contract was signed between American Cable Company and Tucker and CMI, whereby American Cable would buy the system for $11,750,000 Dollars and would pay an additional three million dollars for a covenant not to compete, payable to Tucker and Marks.

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In addition to these other problems, Tucker was not only carrying on a full-time law practice as a litigator with the firm of Mitchell, Williams, Tucker & Selig, but also, he had discovered that his chronic colitis condition had adversely affected his liver, resulting in a destruction of the bile capillary ducts. His liver failure was in the late stages and physicians were already predicting the need for a liver transplant. His system was poisoned, affecting his reasoning ability. Thus, time became important.

This was the situation in September of 1987 when Tucker and Marks engaged my firm's services to assist in sorting out the various problems. Not long after this, on October the 20th, Starks actually sued Marks for his one-sixth interest in whatever Marks had, and McClelland, Starks' attorney, followed this up with a letter to Tucker, stating that if Tucker and PCS and CCLP and CMI did not cooperate, then he would, most assuredly, join them as parties to the action.

My recommendation was to have Tucker and CMI rescind the merger. See the rescission demand attached as Exhibit "B." The rescission was based first, on a technical ground that CMI, according to the Articles of Merger, voted less than half its outstanding shares in favor of the merger, and secondly, that the rescission was based on fraudulent omission to state material facts in connection with the claims of Starks, as well as other matters. There was precedent in Iowa for an "unmerger" and so, following that precedent, and the recommendation of Iowa counsel and documentation prepared by attorneys, Stephen Zumbach of Des Moines, Iowa and the Mitchell Law Firm, an affidavit was filed in Iowa and a certificate was issued by the Secretary of State that Planned Cable Systems was, again, in good standing. The Planned Cable System shares which were purchased by Tucker from Meredith were, pursuant to direction from Bill Marks, issued to a company owned by his wife, Donna Marks. Meredith Corporation was not brought into the rescission, Marks having agreed to bear the brunt of the action, and Meredith having sold the Note and stock, "as is, where is."

The unmerger having taken place, Starks' claim was then, probably, once again, limited to one-sixth of Marks' 18 percent of the PCS shares, although, arguably, he might have been entitled to one-sixth of the shares which Marks caused to be issued to Donna Marks. The assets were redistributed according to pre-merger ownership. CMI, again, became the owner of the South Lake System. Marks, individually, received the Carrollton system. Tucker regained all of his interests in CCLP and CMI.

Following the "unmerger", which took place in early November, we were advised that there was very little likelihood of settlement with Stark's (the advice coming from Bruce Hallett with Gardere & Wynne, Marks' attorney) and that we were likely in for the long haul. Problems still existed since the unmerger might not be a complete bar to the ability of Starks to obtain equity interests in all of the other corporations. Tucker elected to exercise his rights as a secured creditor, as holder of the Meredith Note, and foreclose. At this point, CMI owned the Dallas Suburban system at South Lake. Marks owned the Carrollton system outside Dallas. PCS owned the Florida system and the other Dallas suburban systems. CMI had advanced more than $1,000,000.00 toward the build-out of the remaining Dallas suburban systems and consequently, was its only serious creditor

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besides Tucker. And, Tucker held a Note with a balance owing of over Nine Million Dollars, secured by the both the systems in Texas and in Plantation, Florida. The books and records of PCS were a shambles. Feldman was not to be trusted. There was concern that Marks might have made other commitments to other employees and associates that he had not yet divulged. The method elected was to put the company in a Chapter 11, with a Plan and Disclosure Statement filed with the Petition, together with consents of the creditors of each affected class. This "fast track" is a common practice and, not as originally asserted by the Office of Independent Counsel, a fraudulent bankruptcy. The method was legally and properly used.

As a precursor to Bankruptcy, a friend, Don Wendell of Denton, Texas, now a judge, furnished a dormant corporation called, "Landowners Management Services, Inc." (LMS), to be used to merge PCS with. This was done for several reasons: A Texas corporation needed to be utilized, rather than an Iowa one, so that the "fast track," for which was being applied for, would be unimpeded by the existence of a foreign corporation; and through a merger, the Starks' claim would be fixed as the fair market value as of the date of the merger, rather than let him "go for the ride" for the advantage of later additions and value added. Mitchell Law Firm, which had done the original acquisition papers and the original merger handled the documentation for the merger and the merger into LMS took place, with the LMS shares issued 18% to Bill Marks and 82% to Donna Marks' little corporation, Mikado Leasing Company, Inc. Bill and Donna Marks did not want the Bankruptcy papers to reflect that either was a controlling shareholder of the Bankrupt corporation, hence, Donna and Bill wanted Mikado to be the holder of Donna's shares. I am told that this is a common practice in Bankruptcy matters.

No financial or corporate transaction or series of transactions suggested by me and the other participating lawyers was fraudulent or contained misleading information. I was not involved in the preparation of the bankruptcy documents. In fact, since I do not hold myself out to be an expert in bankruptcy law or procedure, the preparation and filing of the subject PCS/LMS bankruptcy was done by Mr. Van Oliver of the firm of Andrews & Kurth, of Houston and Dallas and by Mr. James Dowden, a lawyer with our firm, specializing in bankruptcy and, at that time, my partner. Both Mr. Oliver and Mr. Dowden were totally and completely informed of all facts regarding PCS' and Marks' and Tucker's relationship, the pending sale, and Fleet Bank's loan and security.(See Exhibit "C", being the Fleet Loan Agreement Modification, which contemplated the Florida sale and was dated about a month before the bankruptcy filing and which was in the files of Oliver and Dowden.) I did not review the bankruptcy pleadings (and in particular, the Disclosure Statement mentioned in the Complaint) until shortly before the bankruptcy hearing.

The Bankruptcy Petition was filed on the 30th of November before the Bankruptcy Judge in Fort Worth. Andrews & Kurth and Josephine Garrett of Fort Worth took the lead in the court proceedings. The Judge approved fast-track status and on the 18th of December, approved the Plan and entered an Order of Confirmation. All of the assets of Landowners Management were distributed, according to the Plan, to Tucker and to CMI on or before December 31, 1987.

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Under the terms of the Plan, all of the creditors were to be paid as and when due, except the two affected creditors, being Tucker and CMI, and all the rights of the shareholders, Bill Marks and Mikado Leasing, were extinguished.

Meanwhile, the Starks' suit was tentatively settled by me on the same day that the Bankruptcy action was filed, being November 30. I was in Dallas and during the course of the day, paid visits to the three law firms representing the various parties, and worked out a settlement, which was set out on a legal pad and signed by Starks' attorney, McClelland, and me. The settlement was later formalized by a contract executed on December 15. Under the terms of the settlement, Starks would receive the sum of $600,000.00 in satisfaction of any and all claims. The $600,000.00 had to be paid on or before January 12, 1988; otherwise, the settlement was to be null and void.

Tucker then approached American Cable, advised it that he had succeeded to the assets in Florida, and proceeded to put under contract the agreement to sell those assets for Eleven Million, Seven Hundred Thousand Dollars, with an additional covenant not to compete in the amount of Three Million Dollars, payable to Tucker and Marks as they might agree. The closing took place on the 9th of January. From the proceeds. Fleet Bank was paid about Nine Million Dollars and Starks received his $600,000.00 settlement. Expenses of sale, including unpaid expenses, totaled nearly another One Million Dollars. Marks received the covenant not to compete money. Later, it was learned that Bill Marks had omitted about $1,500,000 from his personal return of the covenant not to compete money. That fraudulent return was utilized by the Office of Independent Counsel to persuade him to plead guilty to a felony and become a witness for the government case (the OIC having agreed to drop all other charges and to forego filing tax fraud charges in connection with the personal return.)

We have been severely criticized by the Independent Counsel for non-disclosures in the Bankruptcy Plan and Disclosure Statement, and in failing to notify Fleet Bank. The only significant omissions I can recall are that the Disclosure did not state that Tucker, by separate negotiations, had contracted with American Cable to sell the Florida system, and that Tucker's lender, Fleet, claimed a lien on the cable assets.

In determining what data should be included in the Bankruptcy Disclosure Statement, a meeting was held in November attended by Mike Gratz of Frost, Tucker, James F. Dowden of Arnold, Grobmyer & Haley, and Van Oliver of Andrews & Kurth. The meeting was held in Dowden's offices in Little Rock. Dowden is a senior bankruptcy specialist. Oliver was the top Dallas bankruptcy specialist in his law firm, which had more than 300 attorney members. There, the decision was made not to list Fleet Bank as a secured party. I understand that the reasons were that, Fleet was going to be paid in full; and, the bankrupt company did not owe Fleet—Tucker and Marks did; third, under the "triangular preference" rules then in force, Fleet's security interest would be ignored since its loan was for the sole benefit of the shareholders, not the company itself. Thus, the plan of transferring the assets to the Fleet borrower, Tucker, did nothing but further enforce Fleet's position. With respect to the Meredith Note, the assignment of

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the Note by Tucker to Fleet in June. 1987 as collateral specifically stated that so long as there was no default in the payments to Fleet, nothing in the assignment would prevent Tucker from exercising any and all rights and remedies that he might have in connection with his purchase of the Note from Meredith. See Exhibit "D". Also, the decision was made not to list the pending sale. I understand that there were two reasons for that decision. First, if the sale were disclosed, then Starks might well disrupt the closing. Second, the sale was by Tucker and Marks, who were providing additional elements of the sale and bargain which the bankrupt company could not provide, namely, covenants not to compete (which were critical to the sale) and warranties as to subscribers and equipment and paid bills which only Tucker, not the company, would be financially capable of providing.

Dowden's notes of that meeting are attached. See Exhibit "E". Later, Dowden prepared a draft of some of the bankruptcy documents, and forwarded them to Oliver. See Exhibit "F."

During the seven months from June to early January, numerous lawyers and accountants worked diligently to assist Tucker and Marks. The firm of Mitchell, Williams, Selig and Tucker were quite active throughout this period. Most active were Dick Williams, Richard Jans, Wylie Cavin and Jack Lessell. The Mitchell firm was paid over $250,000.00. Gardere & Wynne of Dallas, Texas, were primarily Marks' attorneys, but they were paid over $15,000.00 by CMI alone. John Furst and Richard Hutchins of Coopers & Lybrand, in their Dallas office, were advisors on tax issues. They were paid about 6,800.00. Frost and Company were paid over $4,000.00, but billed for and collected more later for this same period of time. Andrews & Kurth, the Dallas law firm, was paid $22,430.77 for drafting and presenting the bankruptcy papers. Josephine Garrett, of the Ft. Worth firm of Garrett & Garrett, was paid over $4,000.00 for presenting the bankruptcy petition, as local counsel. Steve Zumbach, of Belin, Harris & Helmich, Des Moines, Iowa, was paid $5,000.00 for research and filing of the cancellation of merger. In all, the legal and accounting fees over this period totaled over $420,000.00, not including an estimated more than $300,000.00 earned by Strasburger and Price, Starks' attorneys, Portley & Sullivan of Ft. Lauderdale representing American Cable, Carrington, Coleman, Sloman and Blumenthal of Dallas, representing Marks, and Edwards & Angell of Boston, representing Fleet Bank. Five attorneys with Arnold, Grobmyer & Haley worked on the engagement.

LMS was dissolved as of December 31, 987. Mikado Leasing Company was dissolved then, or soon thereafter. Tax returns were duly filed by all the parties, with the exception of Marks, whose CPA, Feldman, sent us a copy of Marks' 1988 return, but may have failed to file it. We are not sure of this.

In 1988, Marks and Tucker agreed, in principle, to be 50/50 partners on the remaining cable business, so that they would share equally in the proceeds of all sales, with credit to Tucker for the Florida sale that had already been made. The big difference in that agreement is that Marks lost the advantage of the $1,100,000.00 Note, which he would have received if the original transaction had gone through as planned.

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Then, in 1992, all of the 1988 transactions, as well as the 1987 Bankruptcy, were thoroughly audited in connection with the examination of Tucker's tax returns for 1987 through 1991. The audit resulted in an additional tax liability of Mr. Tucker to the extent of about $30,000.00 because of an investment tax credit question. All other matters were cleared. The LMS and PCS tax returns and the Bankruptcy were carefully examined.

The audit of these transactions began in the summer of 1990. Bill Huffman of Frost & Company had all direct dealings with the agents, including giving them the disclosure statement and other bankruptcy papers. He was instructed by me to provide the agents with all information requested, and he did so, including documents which gave a complete picture of the interrelationships of the parties. For example, we know that the agents examined the minutes of meetings of shareholders and directors of CMI. I reviewed the minutes and know that included was a document attached hereto as Exhibit "G," which consists of a supplemental loan agreement from Fleet Bank, signed in October of 1987, the month before bankruptcy, setting out the terms of sale of the Plantation, Florida, system, requiring payment of Nine Million Dollars to release its lien, and agreeing to advance further sums for continued operations and other purposes. This document alone completes the missing data.

The agents logged about 126 hours in reviewing documents and performing the audit. Under tax law, all of the parties to the cable companies in Arkansas, Florida, and Texas were considered related, and seem to have been treated as such by the agents. They found that Tucker had received, in a foreclosure in bankruptcy, an asset in satisfaction of a Nine Million plus Note, and had resold that asset, with additional considerations of covenants not to compete and warranties, for several million dollars more. The IRS could have attempted to reallocate the purchase price, but did not do so. Finding that Tucker had paid Six Million Dollars for the Nine Million Dollar note, and had sold the assets securing that note for around Ten Million Dollars, net, and had paid taxes on the profit, the difference between his Six Million Dollar cost and his net selling price of around Ten Million Dollars, seemed eminently reasonable.

I categorically deny that my conduct violated either Rule 8.4(b) or 8.4(c) of the Model Rules, and I further categorically deny that I admitted (or in fact did) aid or abet "others in the willful failure to completely and accurately describe the history and ownership of Planned Cable Systems; or in failing to disclose a loan agreement with Fleet National Bank and an Agreement to sell Plantation Cable to American Cable Systems to the Internal Revenue Service." Further, I deny that any act on my part resulted in a loss to that government agency in the amount of $3,562,257.00, or any amount. That number was supplied by the Independent Counsel, not so found by the Court. The IRS lost nothing because of my actions, and I state affirmatively that the IRS return, which was audited, was correct. For reasons stated, I did plead guilty to a technical misdemeanor, and I did allow Frost & Co. to provide the IRS with the documents prepared by Van Oliver and others, realizing that the I.R.S. had all necessary information.

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For all of the reasons set out above, I also deny that I violated Model Rule 8.4(b) and (c). I was not involved in the majority of the financial and corporate transactions mentioned in the Complaint, and those I participated in contained no misleading or improper document which facilitated the filing of bankruptcy. Nor did I "allow" any bankruptcy to be filed, and I deny that the bankruptcy filed was fraudulent, or that I allowed the Bankruptcy Court to approve an improper Disclosure Statement. I did not withhold information from the IRS. Although, the IRS received two documents which were not complete, they were given the exact documents requested and all documents needed in the audit.

Note that Huffman's affidavit is attached as Exhibit "A", detailing the work of his office, and the IRS in concluding the audit.

Further, the Affiant saveth not.

John H. Haley

VERIFICATION

I, John H. Haley, do hereby swear, upon oath, that the facts and statements contained in the above and foregoing Affidavit are true and correct to the best of my knowledge, information and belief.

John H. Haley

SUBSCRIBED AND SWORN to before me, a Notary Public in the State of Arkansas and County of Pulaski, on this 24th day of August, 1999.

Notary Public

My Commission Expires:

11-22-03

LABETH ANNE DENNIS
NOTARY
PUBLIC
WOKE COUNTY, AR

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EXHIBIT "A"

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AFFIDAVIT

STATE OF ARKANSAS)
) ss.
COUNTY OF PULASKI)

TO: THE STATE OF ARKANSAS BAR RULES COMMITTEE

RE: MATTER OF JOHN H. HALEY

The undersigned, Bill Huffman, after being duly sworn, on oath states:

I was born and raised in Little Rock and attended UCA in Conway, where I received my accounting degree. After working with several local companies, I joined Frost and Company in 1988, where I practiced as a tax manager. I had no professional or personal involvement with any member or entity related to any of the respective cable entities prior to joining Frost & Co. I am presently Vice President of F.S.B. Mortgage Company in Little Rock, Arkansas.

Upon joining Frost & Company as a tax supervisor, Mike Robinson, a tax director, informed me that I would be working on the accounts that included the cable companies owned or controlled by Jim Guy Tucker. He mentioned that the departing staff member that had been working on this account, Mike Gratz, was presently working on several projects for Mr. Tucker and I should anticipate meeting with Tucker relatively soon to go over the details.

Our firms work was primarily in two areas. (1)work with Dorothy Shearer, the bookkeeper at Cablevision Management, Inc. to assist with the proper bookkeeping entries and other bookkeeping issues and (2) preparation of the subsequent years' income tax returns. During our work with Tucker, we were asked, from time to time, to provide schedules with tax implications, and determine current bookkeeping issues and distributions, etc.

On June 8, 1990, Tucker received notice that the IRS would examine the 1988 income tax return for Cablevision Management, Inc. He requested that we represent the company during the examination. The IRS agent assigned to handle the audit was Donna Simmons with Arlena Jackson supervising and assisting. We handled the examination in a routine fashion. During the course of the examination, all of the related cable entities were researched and Arlena Jackson opened County Cable Limited Partnership for examination. Also, Tucker's 1988 individual return was reviewed and approved by the IRS. It has been my experience that an examination of such matters requires many hours. I have subsequently seen the hours logged by these agents and am offering their summary as Exhibit A. These exams were completed in approximately the first quarter of 1991 with the auditors examining hundreds of thousands of pages of documentation, which were submitted per request of the auditors. The documentation furnished included the Disclosure Statement. Although the Disclosure Statement did not include the Fleet Bank Loan details or the pending sale of the Plantation Florida cable system the details of those omissions were reflected in other documents examined by the auditors. I am certain auditors examined the minutes of the meetings of Cablevision Management, Inc. John

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Haley was aware that these documents were examined. A copy of the minutes referring to, both the Fleet Bank Loan and the pending sale and incorporating the Fleet Loan Agreement is attached as Exhibit B. I also know that several pages of the Disclosure Statement were attached to the answer sheets I provided to the auditors. I am sure that the agent knew about the issue of the bankruptcy because the basis figures were based from this time frame and we discussed basis in depth. There should be no doubt that the information was indeed available to the auditors and all necessary documentation was provided.

During the course of the audit, I conferred several times with one of Tucker's lawyers, John Haley, who expressed an objective of giving the IRS agents all of our relevant documents so that their audit would be thorough and complete. I feel that we did this.

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EXHIBIT "A" TO
AFFIDAVIT OF BILL HUFFMAN

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EXAMINING OFFICER'S ACTIVITY RECORD

AGENT/AUDITOR: D Simmons

DATE ASSIGNED:

71-0614000 071317485

ISION MANAGEMENT INC

8922

IRST COMMERCIAL BLDG
ROCK AR 72201

ADDRESS (If different from that on return)

PHONE NO.

APACITY

DATE

PRESENTATIVE(S)
ME

ADDRESS

PHONE NO.

SUBSEQUENT CONTACTS

DATE	PERSON CONTACTED	TIME (Hours)	REMARKS, NOTES, ACTION TAKEN
8-90		3	Updated to 12 ordered transcripts: CBR research requested, set up case file discussed issues pertinent to case. Need w/ctb W-T return should be worked revised appt ltr w/ doc. request, fwd'd notes to EOG.
13			CPA called left message wishes to relocate to his office - no place to work off-IP's
25	B Huffman	8	his Met w/CPA at office obtained background info to begin review of ctb's returns & related returns also present CPA A. Jackson
26	B Huffman	8	Continued on site w/ A Jackson

IRS-CMI#05-00000083

1-103 (Rev. 8-81) *Use all prior issues*

Department of the Treasury
IRS - Southeast Region

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mining Officer's Activity Record (Continuation)

Person Contacted	Time (Hours)	Remarks, Notes, Action Taken
	8	Completed review of available records returned to office to discuss case & my possible related duties. Mrs. Rothschild followed up w/ POA Continued analysis of info obtained
	4	Returned into - prepared worksheet & doc. list
	3	Completed acc Rec Discussed w/ CAPT trade. Charts mailed to POA-TP
B. Huffman	8	Text to / POA on site. Began review of records
"	4	Continued on site
	5	Completed review / consideration of reviewed records, legal / preparation for rpt
	2	Completed ROR reviewed w/ CAP corrected, mailed to CPA. To
B. Huffman	4	Continued on site IRS-CMI#05-00000084
	8	Discussed issue w/ mgr DAO per rpt / open P/S. Continued gathering & reviewed records. Prepared ROR

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nining Officer's Activity Record (Continuation)

Person Contacted	Time (Hours)	Remarks, Notes, Action Taken
D Huffman	2	Prepared RR, consulted, worked; copies to CPA's discussed RR, returned mailed copy to T.P.
"	8	Review info requested, on last OIC discussed Status & Next Procedures w/ CPA " "
"	2	Review IMP requirements w/ CPA advised of pending schedules, returns
	1	Reviewed Treasury and Issues Subs: Research - Delaware Business to review due to common officers & related entities
"	2	Discussed w/ Dir. expenses w/ CPA - CAP " "
	2	Info on Related Entities obtained, Negative Pledge Info " "
D Huffman	1	Prepared draft of RR Met w/ CPA & Field (Revising Comm. on Fees related entities. Mtg w/ Coo - Final review of file " "

IRS-CMI#05-00000085

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EXAMINING OFFICER'S ACTIVITY RECORD	AGENT/AUDITOR Donna Simmons Arlene Jackson	DATE ASSIGNED
TP: TR re Vision Mgmt Inc	ADDRESS (If different from that on return) 1988 71-0614008	PHONE NO.
TIAL CONTACT WITH ME	CAPACITY	DATE
PRESENTATIVE(S) ME	ADDRESS	PHONE NO.

SUBSEQUENT CONTACTS

DATE	PERSON CONTACTED	TIME (Hours)	REMARKS, NOTES, ACTION TAKEN
5/90		8hrs	Assisted examiner on Site, Reading contracts of Sale and Acquisition of Cable company. - Inspected and relevel returns considering potential issues regarding acquisition and formation of other companies. Case involved with sales of partners exchanges of assets between related companies Acquisition and distributed to related parties
6/90		2hrs	complete reading of Sales and acquisition contracts. Examiner will organize file for document request and consideration of Information -
7/90		3hrs	Research - Partnership Cons. Tp 11205 is a partner in a partnership - Also other partners were liquidated preliminary research.
/		8hrs	Analyze income account. Management Contracts Adjusting entries etc

IRS-CMI#05-00000086

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Examining Officer's Activity Record (Continuation) Cable Vision Mgmt, L

Date	Person Contacted	Time (Hours)	Remarks, Notes, Action Taken
12/10		2hrs	Discussed issues with examiner at Preparer's Office.
3/90		1hrs	Discussed issues with examiner to date - Tp POA did not report 56,000 of management fees with extend exam Oth related Tefra partnership since this tp had related transactions - Unit assist examiner on the Related 1065
/90		2hrs	Review Prior to closing - Review RAL and Resolving questions

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EXAMINING OFFICER'S ACTIVITY RECORD	AGENT/AUDITOR	DATE ASSIGNED
	D Simmons	
XPAYEP Betty Sue	ADDRESS (If different from that on return)	PHONE NO.
TIAL CONTACT WITH JE	CAPACITY	DATE
PRESENTATIVE(S) JE	ADDRESS	PHONE NO.

SUBSEQUENT CONTACTS

DATE	PERSON CONTACTED	TIME (Hours)	REMARKS, NOTES, ACTION TAKEN
-11-90		1	Established on ADMS Secured case file
13-90		4	Worked on BHR, Closed to Unpost on Assess Posted Sec to Quarterly Hasani CPA schedule
28-90		2	Made copies Reviewed by CPA & Entered Adjustments of 8582
5-90		4	Contact CPA re uncorrect- ions w/8582 Adjustments Received Mobile Tapes to Use to Retain Act Completed BHR
4	BKaufman	1	Met w/CPA-held Closing Conf. ADH to advise her Mistakes. Met w/CPA for final review
7		1	Rec'd report - Closed case

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EXHIBIT "B" TO
AFFIDAVIT OF BILL HUFFMAN

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Form 4564 Rev.Jan.1984	Department of the Treasury Internal Revenue Service INFORMATION DOCUMENT REQUEST	Request Number

TO: (Name of Taxpayer and Co. Div.or Branch)	Subject	
Cablevision Management, Inc. 1700 First Commercial Bldg. Little Rock, AR 72201	1120S for 1988	
	SAIN No.	Submitted to:
Please return with listed documents to requester listed below.	Dates of Previous Requests None	

Description of Documents Requested

1. Corporate minutes.
2. Copy of officer/shareholder income tax returns.
3. Employment tax returns (if applicable) --- Form 940, 941, W-2, W-4 and W-4E
4. Copies of any 1099's or 8300's you were required to file.
5. Any excise tax returns filed (if applicable)
6. Forms files and determinations received relating to pension, profit-sharing, etc. plans (if applicable).
7. All books and records reflecting income and expenses including but not limited to the following:

   a. Cash receipts and reimbursements journal.
   b. General ledger.
   c. General journal.
   d. Workpapers used in preparing return, including trial balance, journal entries and adjusting journal entries.
   e. All bank statements, cancelled checks, check stubs and deposit slips for all bank accounts. (checking, savings, CD's, etc.)
   f. All paid invoices and receipts. Wait until Requested.

8. Copy of prior and subsequent year corporate returns.
9. Copy of any amendments to return currently under examination and those relating to prior and subsequent year returns.
10. Copy of any prior year examination reports (if previously examined)
11. Computation of or the records necessary to compute the shareholder's basis in the corporation.
12. Records pertainent to the sale and acquisition of assets.

Name and Title of Requester	
Donna Simmons, Revenue Agent	6-8-90
Office Location 700 W. Capitol, Litte Rock, AR 72201	

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CERTIFICATE

I, Secretary of Cablevision Management, Inc., hereby certify that the attached Memorandum of and Consent to Action by Shareholders and Board of Directors of Cablevision Management, Inc., contains a true and correct copy of the Resolutions adopted by Cablevision Management, Inc., on this 30th day of September, 1987.

Secretary

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MEMORANDUM OF AND CONSENT TO ACTION
BY BOARD OF DIRECTORS
AND SHAREHOLDERS
OF
CABLEVISION MANAGEMENT, INC.

The undersigned make this Memorandum of and Consent to Action by the Board of Directors and Shareholders to be placed in the corporate minute book in lieu of formal meeting this 30th day of September, 1987. By signature below, each member of the Board and each shareholder consents to the action taken informally in respect to this matter and approves the actions set forth below:

WHEREAS, this Corporation has agreed to act as Guarantor for the $8,500,000 Demand Line of Credit Agreement, dated June 10, 1987 (the "Loan Agreement"), among Fleet National Bank, for itself, and as agent for State Street Bank and Trust Company, (collectively the "Lenders"), Jim Guy Tucker and William J. Marks, Sr.; and

WHEREAS, that Line of Credit is being increased to $7,940,000 by Fleet National Bank and $5,460,000 by State Street Bank & Trust Company (the "Lender"); and

WHEREAS, in connection therewith the Lender requires this corporation to execute certain documents including an Agreement of Consent, Modification and Confirmation of Security.

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and all other documents and take any and all acts in any way related to the transactions contemplated by the Loan Agreement and Modifications thereto, including without limitation, the borrowing of funds, the execution of promissory notes and the granting of security to the Lenders.

FURTHER RESOLVED, that the execution and delivery by the President and any Vice President of this Corporation of any of the aforesaid agreements, documents and instruments authorized in the preceding resolutions, and the taking by any such officer of any acts in any way relating to these transactions shall be conclusive evidence of the approval thereof by the Board of Directors and Shareholders of this Corporation and of his authority to execute and deliver and take the same in the name and on behalf of the Corporation.

FURTHER RESOLVED, that the Lenders and their successors and assigns are hereby authorized to rely upon these resolutions, and any certificate of the Secretary of this Corporation with respect thereto, until receipt of actual written notice of the revocation thereof.

BOARD OF DIRECTORS:

Jim Guy Tucker

William J. Marks, Sr.

Betty Tucker

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TAB 2

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131,641.50

Cashiers Check:
to: =

James Federal Savings & Loan Assoc

Remitter: Jim Key Pucket =

Loan Proceeds

Per Jim McDougal

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TAB 3

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EXHIBIT 3

BACKGROUND OF "CASTLE GRANDE" DEVELOPMENT

A. The assets of Industrial Development Corporation

In the mid 1960's Industrial Development Corporation was formed by little Rock civic leaders with the assistance of several of Little Rocks largest banks to develop an industrial park for Southeast Little Rock. This land, and its assets, was the property later acquired by Madison Financial Corporation and which became known as "Castle Grande". To provide water service for tenants of the industrial park, IDC drilled wells to a very large aquifer under the park. The aquifer was capable of serving 42,000 people[1]. IDC also built sewage treatment ponds and distribution pipe for both the water and sewage plant. Water pressure and reserve was provided by a 750,000 gallon elevated storage tank.

The park was located adjacent to State highway 65, a four lane divided highway leading from Little Rock to Southeast, Arkansas. It was, and remains the only four-lane highway from Little Rock to Pine Bluff and Southeast Arkansas. The Industrial Park was also located at the intersection of 145th Street, the principal east west thoroughfare in that area. In the fall of 1985 and early winter of 1986, this intersection was planned by the Arkansas Highway Department to be the terminus of a proposed four lane "south loop" to provide east-west transport between Interstate 30 from Little Rock to Benton and southwest Arkansas and Highway 65. The project was not a success as an industrial site. However, it did attract Levi Strauss, Siemens-Allis, and a few other businesses. A real estate development company[2] purchased and built "Quail Creek", a residential development immediately adjacent to the property. The residents of Quail Creek were served by the IDC water and sewer system.

This property was just 14 miles south of Madison's main Little Rock office. McDougal's plan was to develop this proposed major highway intersection as a residential development using Madison Financial as the developer and Madison Guaranty as the mortgage finance source.

Given the philosophy and regulations then governing savings and loan institutions, McDougal's plan was, on its face, a rational and sound one. McDougal and his wife were already developing another residential project, "Maple Creek Farms" 12 miles further south. Advertising had created immense interest and sales were proceeding at a fast clip. Both Maple Creek and the new "Castle Grande" development were considered "hot properties".

---

[1] According to data provided by engineering firm Edward G. Smith & Assoc.

[2] Originally associated with Winthrop Rockefeller.

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B. Tucker's Purchase of 34 acres

On October 25, 1985 MFC sold Tucker 34 acres of land at the southwest corner of the proposed intersection of the south loop bypass and Highway 65 for $130,000 (an average of $3,800 per acre). The acreage already had electricity and gas available on it; sewage and water service were available within about 200 yards with an extension from the industrial park under the highway. The land purchased had direct frontage on 145th Street, the proposed south loop, and nearly a mile of frontage on Highway 65. Elevated signage on the property would make it visible to Highway 65 traffic. McDougal also showed Tucker a comparable sale he said had made to Union Bank of Little Rock for a branch on the opposite side of the intersection. Tucker was fully liable on the loan and paid it off.

C. Castle Sewer and Water:

Having purchased the 34 acres, Tucker began discussions with McDougal to obtain an extension of the Castle Grande water system to the property. On December 31, 1985 McDougal called Tucker at his law office requesting that articles of incorporation be filed for a company to purchase the sewer and water systems at Castle Grande. He wanted the company incorporated before the close of business that day. He said that Hale's Company and R.D. Randolph were to be the owners of the new company.. The company was established by a paralegal and associate attorney and articles filed that day for Castle Sewer & Water Corporation Inc.

Subsequently, McDougal eventually called Tucker and stated that his board did not want to sell the property to Randolph, and asked if Tucker would be interested in acquiring the property. McDougal gave Tucker a brief outline of the customers, and income from the water system. [3]. Tucker then met with McDougal and began a due diligence review of the records of the sewer and water system, McDougal's plans for development Castle Grande, and the status of the proposed south loop expressway then planned for termination at the intersection of Castle Grande and Highway 65. The engineer who had first developed the water system gave Tucker a favorable report on the quality and value of the aquifer saying it could serve a population of 42,000 people. Water quality was excellent[4].

---

[3] McDougal's sales pitch was that (a) the cable company was serving the residents in and around Castle Grande already and that, if the development was successful, the cable company would have more customers; (b) the personnel of the cable company were already in the area; (c) the cable company could use joint trenching with the sewer and water company for laying its cables; (d) the sewer and water company would be easily profitable as Castle Grande expanded and the south loop was built. Tucker knew that that the area immediately to the west of Castle Grande would develop more rapidly (and offer more cable TV prospects) if it had a closer source of water; and that town of Wrightsville, immediately east of Castle Grande and also served by the cable company, needed sewer access and could be a significant source of income for the sewer and water company. In addition, the cable company could benefit by using the lot where the utility's office was located for cable and equipment storage and the utility office could double as a satellite cable office for bill paying, and for toilet facilities for field staff. As a high profile personality, Tucker did not want to be listed as the President of a company that might generate significant customer complaints as it was reorganized, so he made the manager of the cable company (who already handled cable complaints and service needs from the same residents) the President of the cable company.

[4] Hale attended. Although he testified this meeting was in December, in fact it was in late January.

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In the course of his due diligence review Tucker identified major risks[5]: These risks confirmed Tucker's view that he should not assume any personal liability on the purchase contract with MFC.

McDougal provided Tucker a letter from the engineering firm involved in the construction of the sewer and water system showing a replacement valuation of $1.529 million. Tucker performed cash flow analyses and countered with a proposed purchase for $1.05 million and guarantees from MFC as to hook up fees. That proposal became the basis for the loan application to CMS.

[5]First, the company had never been registered as a utility and was not exempt. Although dozens of similarly situated private water companies in the State were also unregistered, Tucker considered this a major risk. If the company was forced to become a utility its rates might be kept too low for profitability. In addition the cost of accounting, and legal assistance for regulatory compliance by a company this size would have been prohibitive. Second, the success of the sewer company would be dependent upon the success of the Castle Grande development. That, in turn, depended in large measure on the ability of Castle Grande to continue to provide financing for lot purchases and development. Third, risks of environmental liability from the sewage ponds and tort liability in providing water supply. Finally, Tucker estimated that about $35,000 would be needed for maintenance of the company's 750,000-gallon storage tank, and that additional capital would be required for other maintenance and working capital, assuming a continued rapid expansion of Castle Grande.

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TAB 4

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AFFIDAVIT OF CARYN MANN

My name is Caryn Mann. In 1994; my son, Joshua Rand, and I moved in with Parker Dozhier. Mr. Dozhier owned and operated a bait shop and rental units on Lake Catherine near Hot Springs.

When I moved in, David Hale was a frequent guest. In late 1994, after Kenneth Starr took over as Independent Counsel, the FBI moved Hale into a rental unit there. Hale resided there most of 1995, generally three to four nights a week, at least three weeks a month.

I have personal knowledge that Parker Dozhier received money from the American Spectator and Stephen Boynton. I also have personal knowledge that Dozhier provided to David Hale a free rental unit, an automobile and insurance thereon, utility bills for a residence he maintained in Shreveport, Louisiana, and cash money. He did this with funds provided by the American Spectator and Boynton. Dozhier also told me that he and Hale had met with Richard Mellon Scaife.

I have personal knowledge that through much of 1994, FBI agents generally accompanied Hale. In 1995 and 1996 FBI agents would come to Lake Catherine and meet with Dozhier generally on Sundays.

I have testified before a federal grand jury in Fort Smith concerning some of these issues. Because of time constraints under which I was placed by the prosecutors,

EXHIBIT 4/

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I was not permitted to disclose everything relevant about which I had knowledge.

CARYN MANN

STATE OF ARKANSAS
COUNTY OF WASHINGTON

SUBSCRIBED AND SWORN TO before me, this 15th day of August, 2000.

Notary Public

My commission expires:

8-31-2002

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TAB 5

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EXHIBIT 5

SUMMARY OF 28 U.S.C. § 2255 PETITION AND HALE TESTIMONY RE OLSON

Before trial, Tucker specifically sought Rule 16 discovery and disclosure arrangements with witnesses and all information to which he was entitled under the doctrines enunciated in *Brady v. Maryland.* 373 U.S. 83 (1963) and *Giglio v. United States*, 405 U.S. 150 (1972) The OIC asserted that it would comply with its obligations. The District Court took those assertions at face value and held the requests to be moot in an October 27, 1995 Order.

As trial time approached, Tucker and the other defendants filed more specific motions reflecting information obtained in trial preparation. These requests should be viewed in light of the fact that Tucker had sought to interview Hale, that the OIC resisted and that the District Court denied the requests.

Tucker had also filed a motion incorporating the relevant requests made by the co-defendants, which the District Court granted.

On January 18, 1996, Tucker filed a Motion to compel all arrangements with David L. Hale be revealed to him. (Doc. 290). This motion, pointed out that the OIC had not disclosed the "indirect, incidental or collateral benefits" Hale had received from the government. Given the obvious political implications of Hale's allegations and the prospect that those allegations were shaped or motivated by political opponents of Tucker or Clinton, the motion included the following requests for information:

> k. Any meetings or conversations that David L. Hale had with, including but not limited to: members of the Republican Party or with Republican Candidates in the United States; Jay Lefkowitz; The Free Congress Foundation; **American Spectator Magazine**; William Kristol; The Landmark Foundation; and Michael Joyce, President of the Bradley Foundation, between January 1992 and the present regarding allegations in the indictment or allegations regarding William J. Clinton, Susan McDougal, James B. McDougal or Jim Guy Tucker.(emphasis supplied).
>
> l. State whether or not any financial aid has been given to David L. Hale from, but not limited to: any members of the Republican Party or any Republican Candidates or any person who is against Clinton or is considered from the "right"; Jay Lefkowitz; The Free Congress Foundation; **American Spectator Magazine**; William Kristol; The Landmark Foundation; and Michael Joyce, President of the Bradley Foundation and/or the Bradley Foundation and its officers. (Emphasis supplied).

The motion also pointed out that the Court's ruling of January 12, 1996, required disclosure of all evidence that was favorable to the defendants, including arrangements with witnesses and that the Independent Counsel, by not disclosing the information, was in violation of the Court's order.

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The Independent Counsel's response was that:

> The United States has no independent /fn 3/ knowledge of such contacts. Plainly, the government cannot "disclose" information that it does not possess, see *United States v. Page-Bey*, 960 F.2d 724, 726 (8th Cir. 1992), nor is it required to seek out from third parties information the defense deems useful for impeachment, see *United States v. Meros*, 866 F.2d 1304, 1309 (11th Cir.) (government "has no duty to undertake a fishing expedition in other jurisdictions every time a criminal defendant makes a Brady request for information regarding a government witness'), *cert. denied*, 493 U.S. 932 (1989).

The Independent Counsel's use of the term "independent knowledge" appears, upon analysis of the subsequently obtained information, to have been an attempt to mislead the Court and Tucker into a belief that they had no knowledge of a network of anti-Clinton and anti-Tucker political activists, some with close connections to the Office of Independent Counsel, aiding Hale and communicating regularly with Hale. This failure to disclose deprived Tucker of the tools to properly cross-examine and impeach Hale.

At about the same time that Tucker had made his request for information on Hale's contacts with political opponents of Tucker and Clinton, James McDougal filed a Motion for Full Disclosure of Benefits Provided to David Hale (Doc. 308) which was incorporated into Tucker's requests.

The McDougal motion noted that McDougal had been made aware that Theodore Olsen (sic) was representing Hale and that Olson and Independent Counsel Starr were former law partners. The motion further noted that:

> 3. Counsel for Mr. McDougal has reason to believe that Mr. Starr, either through funds available to him as Independent Counsel, or through other means, has paid Mr. Olsen a fee, or has obtained Mr. Olsen's agreement to represent Mr. Hale pro bono. This information appears to be in direct conflict with the itemization given by the Office of Independent Counsel concerning their expenditures for David Hale.
>
> 4. It has also come to the attention to the attorney for Mr. McDougal that David Hale was reported to have been seen at a fishing camp in Canada recently, at which time he was in the company of various and sundry FBI agents.
>
> 5. Mr. McDougal has consistently requested that the Office of Independent Counsel make full and complete disclosure concerning Brady material, or material which would be subject to impeachment of Mr. Hale. These matters clearly fall within that area, and it is hoped that the Independent Counsel will readily respond to these two areas and inform defense counsel of the exact nature of Mr. Hale's representation by Mr. Olsen and any "fishing expedition" Mr. Hale was authorized to go on while in the company of the FBI. Further, Independent Counsel should disclose immediately the number of FBI agents assigned to Mr. Hale to protect him from being interviewed by defense counsel pending his appearance in the trial of this matter.

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> 6. This Court has been very patient with discovery matters which have been extremely critical to the defense. Disclosure of materials such as those sought by this motion rests exclusively within the knowledge, possession and control of Independent Counsel. These issues involve extremely critical constitutional areas, such as Brady and Giglio. This Court has, time and time again, ordered the Office of Independent Counsel to be full and complete in their disclosures.

In response (Exhibit 4) to McDougal's motion, the Independent Counsel asserted that "Neither Mr. Starr, personally nor anyone from OIC has asked Mr. Olson to represent Hale or otherwise discussed the matter with Mr. Olson." (Emphasis supplied)(Doc. 314). The OIC claimed no knowledge of any fee arrangements between Olson and Hale.

Although in responding to Tucker's motion the OIC said that it was not required to search for the materials, the OIC responded to McDougal's motion by criticizing him for filing a motion without giving the OIC an opportunity to search its files and conduct due diligence.

On February 6, 1996, the District Court refused to order any further disclosure, accepting at face value the Independent Counsel's claims that it had provided all *Brady* and *Giglio* material and was in compliance with the court's orders.

On February 9, 1996, Petitioner filed a Motion and Brief seeking reconsideration. In the brief, Tucker argued, citing cases, that any inducement to the witness was *Brady* and *Giglio* material which the prosecution was required to disclose. The brief also noted that, since the Independent Counsel had conceded that it had notice that Hale had had some contact with the persons and entities mentioned in the earlier request, the Independent Counsel "should be required to make reasonable inquiry about Hale's affiliation with various right wing groups that may be attempting to influence his testimony."

The Independent Counsel went to extraordinary length to object to keep the subsidies to Hale and his connections with political opponents of Tucker and Clinton from emerging at trial. On February 23, 1996, the Independent Counsel filed a Motion in Limine for Order Excluding Allegations of Political Motivation for Prosecution. In that motion the Independent Counsel argued that political motivations were inadmissible as part of a defense. The District Court granting the motion in part and denying in part, recognized the potential significance of political influence on Hale and held that a defendant is entitled to probe a witness' bias in cross-examination, that questions of political motivation might be proper and that the defendants were precluded from introducing evidence that pertains only to a claim of selective prosecution.

As is discussed *infra*, lawyer Theodore Olson of Washington D.C. was at the center of the hidden Hale subsidies and contacts. The Independent Counsel did not want this exposed. In addition to the hidden network of anti-Tucker and anti-Clinton activists, if Olson or others with anti-Clinton or anti-Tucker motives were making significant gifts of their services to Hale or were being paid by third parties with an interest in the charges against Tucker or Clinton, this information should have been disclosed to Tucker as going directly to the truthfulness and motivations of Hale's testimony. Thus, at the trial, as counsel for Tucker was asking Hale the identity of his various lawyers, the following colloquy occurred:

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Q. Theodore Olson in Washington?

A. Yes, sir.

Q. Theodore Olson is a lawyer who commonly argues cases before the United States Supreme Court, isn't that true?

A. I'm not—I don't know. I know he does that. I don't know what he commonly does.

Q. Well, commonly would be twice I think, but he does do that?

A. Yes, sir, he does.

Q. He is a former—

MR. JAHN [of the Independent Counsel's office]: Your Honor, could we object to the relevancy of this again.

MR. COLLINS: There was testimony that Jim Guy Tucker was his attorney, and I'm attempting to show that the word "his attorney" applies to a lot of different folks.

MR. JAHN: So, he admitted he's his attorney. **Now, going into what Mr. Olson does for practice, what Mr. Olson does before the Supreme Court or anything else is completely irrelevant to the issue.** A man named Olson represented him at one point during the course of his life. (Emphasis supplied).

MR. COLLINS: I think we should be entitled, as we did with the others, with Mr. Horne for instance, to establish what Mr. Olson does for him.

THE COURT: Is this going to be extended?

MR. COLLINS: No, not particularly.

Q. (By Collins): Mr. Hale, Mr. Olson is a Washington attorney?

A. Yes, sir.

Q. He's not admitted in Arkansas, is he, do you know?

A. I don't know.

Q. You don't know of him being admitted in Arkansas?

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A. No, sir.

Q. Who pays Mr. Olson to represent you?

A. I do.

Q. And Mr. Olson represents you in what connection?

A. The only thing Mr. Olson represents me, I talked to Mr. Olson in December of 1993 when we got notified that they might subpoena me before Congress. And then last year I got word again that they might subpoena me before Congress so I retained Mr. Olson simply, I do not know anything about how they do that up there, just to advise me on what you do, where do you go, you know.

Q. And were you aware of his background when you hired him, of his fame, how well known was he?

A. When we went up there in December he was just a lawyer to me.

Q. Who referred you to Mr. Olson?

MR. JAHN: Your Honor—go ahead and answer the question.

Q. (Collins): Who referred you to Mr. Olson?

A. Randy Coleman found out there was a fellow down here who worked in Democratic Senator Hollingsworth's office that knew him and recommended him.

(Trial transcript 4109-4111)

Q. (By Collins) All right. Did you know that Theodore Olson was a former partner of Kenneth Starr?

MR. JAHN: **Your Honor, Your Honor, that is outrageous. Counsel is engaging in unscrupulous conduct at this point.** (Emphasis supplied).

MR. COLLINS: That is not unscrupulous, Judge.

MR. JAHN: It is, Your Honor. The Court has already sustained an objection to this line of questioning.

MR. COLLINS: I think I'm entitled to know that he's personally represented by - -

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MR. JAHN: **They live in the same city. So what? We object to it, Your Honor. We object to it.** (Emphasis supplied).

MR. COLLINS: If I may be heard.

MR. JAHN: May we approach the bench?

(The following proceedings at the bench)

MR. JAHN: Your Honor, he's trying to get into the matter the Court has already specifically sustained. Years and years and years ago Mr. Olson belonged to a firm which later on Mr. Starr joined. He's trying to make it seem that Mr. Olson is there now and it's unethical conduct on the part of Mr. Collins and Mr. Collins knows that, and the Court has already sustained an objection to this line of questioning.

MR. COLLINS: **If Your Honor please, the fact that Mr. Hale, their main witness, winds up being represented by the former partner of Kenneth Starr I think that is material how he came to have such a story about the president and perhaps others.** (Emphasis supplied).

MR. JAHN: He's already testified that Mr. Starr had nothing whatsoever to do with retention of Mr. Olson.

MR. COLLINS: Things can happen, Judge, and I think I'm entitled to let the jury draw that inference.

THE COURT: Well, here is what we'll do. This is a rather crucial area. I'm going release the jury and we'll let you argue it out here.

MR. COLLINS: All right. Thank you, Judge.

(End of bench conference).

THE COURT: Ladies and gentlemen of the jury, there is a matter we need to take up in your absence. I'm going to give you an early lunch break. Come back at 1:15. Do not discuss the case or read any articles pertaining to it.

(Jury exits).

THE COURT: All right, you may be seated.

MR. COLLINS: Judge, if we're going to argue the matter relating to Mr. Hale, could Mr. Hale be excused?

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MR. JAHN: We're going to need to get the witness' answer. The witness has no idea of any former relationship.

THE COURT: Well, at any rate why don't you pose your question and let's see if there's an objection.

BY MR. COLLINS:

Q. Mr. Hale, were you aware when you employed Mr. Theodore Olson that he had been a former partner of the same firm, in which Kenneth Starr was a partner?

A. I didn't know Kenneth Starr at that time. Never heard of him.

MR. COLLINS: Withdraw the question.

(Trial transcript 4117-4120)

The false, inaccurate or misleading nature of the Office of the Independent Counsel's response to the motions lulled the District Court into agreement with its response and deprived Tucker of information which he could have used in cross examining Hale.

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TAB 6

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WILLIAM W. WATT

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UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

United States Court of Appeals
For the District of Columbia Circuit

Division for the Purpose of
Appointing Independent Counsels

FILED AUG 1 6 2001

Special Division

Ethics in Government Act of 1978, As Amended

UNDER SEAL

In re:	Madison Guaranty Savings & Loan Association (In re: Madison Guaranty Savings & Loan Association)	Division No. 94-1

Before: Sentelle, *Presiding Judge*, Fay and Cudahy, *Senior Circuit Judges*

RESPONSE TO FINAL REPORT

COMES, WILLIAM W. WATT, *pro se*, and for his Response to the Final Report of Robert W. Ray, Esquire, the Independent Counsel appointed October 18, 1999, in accordance with 28 U.S.C. § 593, as delivered to the Division of the Court in the above-captioned matter pursuant to 28 U.S.C. § 594 (h)(1)(b), states as follows:

1. That Respondent was notified by the Court, under seal, that he was a named individual in the referenced report at:

Vol. I – Introduction, p. 70-71
Vol. I – Appendix 4, vi, xiii
Vol. I – Appendix 5, ix, xii, xiii, xiv, xv
Vol. II, Chapter 1, p. 199

2. That the Respondent moves the Court to include this response in its entirety with its exhibits attached in an appendix to the Report in order to insure fair and equitable treatment of the Respondent as to the inferences and conclusions drawn by the Independent Counsel, and specifically as to the subjective use of isolated and partial testimony, abstracts, and excerpts for purposes of the Final Report

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3. The testimony attributed to Hale and Palmer in the introduction leaves the distinct and inaccurate impression that the appraisal issue as to the related transactions was a complete and foregone conclusion during the meetings which Respondent conducted with appraiser, Robert Palmer. The term "inflated" was a term that was specifically supplied by the Office of the Independent Counsel and/or Federal Bureau of Investigation in the initial stages of the investigation of that real estate transaction.

Specifically as related to all references noted in Paragraph 1 of this Response, related to Robert Palmer and the appraisal issue with reference to the "Dean Paul" or "Etta's Place" transaction, Respondent would offer the following facts and exhibits to be included with this Response:

a. Affidavit of Robert W. Palmer as a clarification and accurate statement as to the actions and involvement of Respondent as to the transaction, attached as Exhibit "A".

b. Copy of a polygraph examination administered on or about June 22, 1995, related directly to the subject loan and the knowledge and actions taken by the Respondent, attached as Exhibit "B".

c. An Affidavit supplied by real estate broker, Valentine Hansen, Re/Max Properties, as to the normal market conduct of a real estate broker or person seeking to acquire an appraisal for property and the normal subject matter or questions which may arise with contact between the appraiser and/or broker, attached as Exhibit "C".

4. Respondent notes in footnote 91, that "Watt was given immunity and testified as a government witness at the trial of Tucker and the McDougals". Attached to this pleading, Respondent would bring forward correspondence from the Office of Independent Counsel dated April 18, 1998, indicating that "this is to confirm that the August, 1999 Order compelling your client, William W. Watt, to give testimony and provide other information to the government, pursuant to 18 U.S.C. 6002 et. sec., is still

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in effect. As you are aware, this office sought this Order from Chief Judge Reasoner prior to Mr. Watts testifying before the Federal Grand Jury in August, 1995.

The classification as a government witness is technically correct; however, based on the selective nature of the "search for the truth" conducted by the OIC and the onerous treatment of Respondent by the OIC, the Order to Compel was a necessary element for Respondent's participation in this case. Said communication is attached as Exhibit "D".

5. As to the loan justification reference made at Volume 2, Chapter 1: page 199, Hale secured the assistance of a significant number of people in conducting his illegal activities; however, it should be noted that the report relies solely on selective entries of testimony from Hale. Throughout three days of expansive testimony by Respondent in the referenced trial, no single quote or reference to that testimony is made in this final report. Respondent would note that the office of Independent Counsel relies solely on the testimony of two primary individuals who were charged and convicted of various federal offenses in this matter.

6. That Respondent would offer the following Affidavits of Mary Ann Young and John Collins Rogers, attached as Exhibits "E" and "F", evidencing specific and personal knowledge of Respondent's activities in the referenced transaction in this Report, as well as referencing specific and personal knowledge as to the credibility, trustworthiness, and truthfulness of David Hale. Again, the Office of Independent Counsel relies solely on David Hale for the interpretation and conclusions to be drawn from an expansive number of trial documents introduced in the subject trial. The lack of objective review, inclusion of relevant information, and overall inclusion of Respondent's

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testimony as to this specific transaction lends a conclusion and outcome certainly subject to error and misinterpretation.

7. As to the specifics of Volume 1, Appendix 4, the Office of Independent Counsel and the Federal Bureau of Investigation went to great lengths to provide for the inclusion of any fact, innuendo, or other reference to then-President Clinton, and in reliance solely on David Hale, attempted to make the connection to this specific loan transaction. Respondent was specifically subjected to severe scrutiny based on the confirmation that Hale did in fact "drop the Governor's name" as being a motivation to move the subject loan transaction forward. However, the Office of Independent Counsel in their review and conduct in the trial, as well as in this Report, also went to great lengths to distort the record and to diminish the testimony of Respondent as to the fact that Hale would lie, that Hale would drop names with absolutely no justification, and that Hale relied on Respondent's relationship with then-Governor Clinton, believing that would in fact create some action on the part of Respondent with reference to this loan, which it did not affect in any way whatsoever. The OIC and the FBI go to great lengths to eliminate and forego any item in Respondent's testimony that is in any way critical to their cornerstone of this Report, i.e. David Hale.

8. That Respondent would offer the following information as general comment and supplement to the Report as filed:

a. That attached to this pleading as Exhibit "G", communication from the Office of Independent Counsel dated March 24, 1996, would indicate that the Independent Counsel was unaware of results to the polygraph examinations conducted by an independent contractor who conducted activities on the part of the Department of Justice on a frequent basis. This correspondence is an error, whether intentional or not intentional, the Office of Independent Counsel was made aware of the subject matter of each polygraph and the general outcome.

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b. The Office of Independent Counsel was presented with adequate documentation and independent testimony from other witnesses to indicate Respondent's activities of a limited nature with David Hale and the fact that no profit was gained nor anticipated, that no benefit was gained nor anticipated, and that in fact, the Respondent took immediate and definitive action to distance himself from Hale and his various business activities as they became known. Attached is Exhibit "H" correspondence dated February 17, 1988, as evidence of this distancing from Hale. Also attached as Exhibit "I" is the Arkansas Real Estate Commission Report evidencing no record of disciplinary action taken against Respondent since 1983, at which time he became a licensed broker in the State of Arkansas.

9. As to Respondent's belief in the lack of objectivity and fact that the Office of Independent Counsel, specifically Special Prosecutor Ray Jahn and Agent David Reign of the Federal Bureau of Investigation, having foregone and preconceived conclusions as to "the truth" as to these transactions, the Respondent would offer the following comments. Once David Hale's character and business transactions became better known, Respondent took objective and definitive action not only to distance himself from Hale but also definitive action to meet his responsibility as a member of the bar for the State of Arkansas and as a citizen having knowledge of unethical or potentially illegal activity.

On or about June 30, 1988, Respondent specifically contacted the Small Business Administration, Deputy Assistant Administrator for Investments, in person in order to expose the current activities of their agent, David Hale, based on his representation that certain funds he derived were under the control or authority of the Small Business Administration. The Deputy Assistant Administrator made himself unavailable and a federally controlled witness, Ms. Demuzzio, an employee of the SBA, was the contact for the disclosures concerning Hale. That SBA employee, who specifically had access to the files of Capital Management and other files originated by David Hale, was placed on

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notice as to potentially illegal and certainly unethical activities being conducted by their agent, David Hale.

At that point in time, July 6, 1988, the Small Business Administration was no longer a victim of a crime committed by David Hale, but a knowing and compliant party to David Hale's activities. There were no appropriate audits, controls, or checks and balances placed on David Hale even after the appropriate office within the SBA had knowledge of Hale's alleged activities.

The relevance of this specific conduct by the SBA and specifically the conduct of the Respondent as to the disclosures was extremely upsetting to Prosecutor Jahn and Agent Reign on behalf of the OIC. Specifically, in the end, this information was withheld from all defense attorneys in the referenced trial of Tucker and McDougal. Specifically in the violation of the Federal Rules of Criminal Procedure, Agent Reign and Prosecutor Jahn participated and committed themselves to a position that systematically withheld exculpatory evidence from the defense in the referenced trial. Respondent disclosed this information in the presence of his attorney in debriefings with these individuals. Prosecutor Jahn has subsequently admitted on public record that he had this information and deemed it "unimportant".

Respondent's objective and aggressive activity to not only extricate himself from the relationships of late 1985 and early 1986, but also Respondent's aggressive action to disclose the activities of Hale, placed Respondent in the position of being a forced "Government Witness". The Clinton association maintained by Respondent and the selective facts and testimony sought by the OIC fit the version of the truth to be

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constructed by the Office of Independent Counsel and their cornerstone witness, David Hale.

10. "A fundamental purpose of the justice system is to have a fair and reliable way to seek out the truth, with the goal that justice will be done. And since ours is government by the people, we rely for the achievement of justice on honest fact-finders." This statement was made to a conference of the National Judicial College on June 9, 2000, by former Independent Counsel, Kenneth W. Starr. The treatment of Respondent in the Final Report, omitting all of Respondent's testimony, either favorable or unfavorable to the position of the government, and the total lack of reference by the Final Report to the documentation supplied in this Response as to the position of the SBA, the overt acts of withholding evidence committed by members of the OIC staff, and any reference favorable to Respondent's extrication from a relationship with Hale certainly would provide the basis for the conclusion that this particular investigation had a foregone conclusion as to its destination, had a foregone conclusion as to the truth, based on Hale, and that the foregone conclusion and destination would be reached without regard as to the sacrifice of people, resources, or the complete truth.

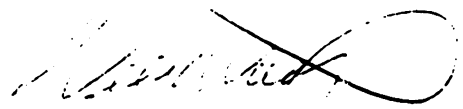
11. Respondent throughout the term of this investigation received fair and equitable treatment from a number of parties, both as defense counsel in the referenced trial and certain members of the OIC staff; however, regardless of the numbers conducting themselves in a fair and ethical manner, the intentional and deliberate distortion of the whole and complete truth involving the relationships of the parties, the conduct of their transactions, and the overall state of mind of the parties at the time the events occurred, provides a distorted view of the truth at best, and in the case of reliance

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on testimony primarily from the chief accuser, David Hale, provides very little substance in an attempt to justify the expenditure of in excess of Sixty Million dollars ($60,000,000.00) by the Office of Independent Counsel.

WHEREFORE, Respondent prays that the Court accept this Response and include said Response with exhibits in an appendix to the Final Report as filed.

Respectfully submitted,



WILLIAM W. WATT
Attorney at Law
1819 N. Fillmore
Little Rock, AR 72207
Telephone: (501) 280-9788
Bar No. 78159

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EXHIBIT "A"

BEFORE THE SUPREME COURT COMMITTEE ON
PROFESSIONAL CONDUCT

IN RE: WILLIAM WAYNE WATT
Arkansas Bar I.D. No. 78159 CPC Docket No. 2000-016

AFFIDAVIT OF ROBERT W. PALMER

I, ROBERT W. PALMER, state upon oath and affirmation that the following statements are true to the best of my knowledge, information and belief:

I.

During the time of 1985 and 1986, I was a full-time real estate appraiser.

II.

In late 1985, William W. Watt, Attorney at Law, contacted me concerning potential appraisal business with David Hale. I had had little or no direct business experience with David Hale and Watt indicated that David Hale had previously shown a pattern of either late payment or, in fact, no payment on various bills for services rendered. He was contacting me for the purpose of making sure that my billings for appraisals completed were paid, and for expediting paperwork for Hale.

III.

I had previously conducted appraisals on properties for Judge Watt.

IV.

Judge Watt asked that I appraise property located at the Sherwood exit of Highway 67/167, which would later become known as "Etta's Place". Time was of the essence and Watt made it very clear that Hale was attempting to complete a loan package with Madison Guaranty Savings and Loan. I had significant appraisal and business dealings with Madison Guaranty Savings and Loan at that time.

V.

In the normal course of business, the appraiser will ask or be asked by the parties their general impression of value anticipated in an appraisal simply to know if there is a realistic expectation or a totally unrealistic expectation on the part of the parties.

VI.

I asked Watt specifically what the intentions were as to the parties for the use of the property and also what the initial expectations were for the loan package. Watt and I visited in general about the numbers and he referred me to David Hale for any specifics.

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VII.

To my knowledge, Watt's involvement was to expedite paperwork and help make sure I received payment for my services rendered. On numerous occasions, he did in fact make reference to my completion date for the appraisals and the fact that it was necessary to immediately complete the work and to make every effort to supply Madison and Hale with the needed documentation.

VIII.

Watt did, in fact, meet his obligation to me by securing payment for my services rendered to David Hale for this appraisal and other than the above-stated activity, to my knowledge, Judge Watt had no active part or any contact with Madison Guaranty with reference to this loan package.

IX.

As an appraiser, it was my full and complete responsibility to determine appropriate valuations and other requirements necessary to complete a fair and accurate appraisal. Watt's actions were to expedite the return of appraisal documents, the completion of the appraisal, and the submission of those documents on a timely basis to David Hale. In my opinion, William W. Watt did not ask me to do anything illegal.

FURTHER THE AFFIANT SAYETH NOT.

ROBERT W. PALMER

STATE OF ARKANSAS)
) ss.
COUNTY OF PULASKI)

SUBSCRIBED and SWORN to before me, a Notary Public, on this 10

day of November, 2000.

Notary Public

[SEAL]

My Commission expires:

DEANNA MAUS
NOTARY PUBLIC, ARKANSAS
JEFFERSON COUNTY
My Comm. Expires July 14, 2004

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EXHIBIT "B"

Central Arkansas Consulting Service

Bob Blankenship
President
2361 Martha Drive
Conway, Arkansas 72032

Telephone (501)329-8640

PERSONAL AND CONFIDENTIAL

June 22, 1995

Attorney Mark F. Hampton
Suite A-5 11716 Rainwood Drive
Little Rock, AR 72212

Re: William Wayne Watt

ARRANGEMENTS

On this date, William Wayne Watt was administered a polygraph examination at your request. He was examined to determine his truthfulness concerning the allegations that he was aware of an over valuation of the appraisal on the Dean Paul loan, knowing the loan was a fraudulent transaction, and that he knew the loan was going to be diverted.

PRETEST INTERVIEW

During the pretest interview, Mr. Watt denied all the allegations against him. The Dean Paul loan was made in 1986. He was not aware that the loan was fraudulent until 1988. Dean Paul went to the U.S. Attorney with this information, which was also known by Mr. Watt.

EXAMINATION

The subject was administered three polygraph examinations. The following is a list of questions asked and the answers indicated.

25. Do you plan to lie to me concerning the questions I am about to ask you concerning the Dean Paul loan?
ANSWER: No.

26. With respect to the Dean Paul loan, prior to the closing of the transaction, were you told, or otherwise made aware of an over valuation of the appraisal on the real estate in question?
ANSWER: No.

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27. With respect to the Dean Paul loan, did you know prior to the closing that the loan was in fact a fraudulent or phony loan transaction?
ANSWER: No.

28. Prior to the closing of the Dean Paul loan, were you aware that the proceeds from the loan were to be diverted?
ANSWER: No.

29. Did you receive any money or favors for this Dean Paul loan?
ANSWER: No.

Mr. Watt showed no reaction to deception to any of the relevant questions asked.

CONCLUSION

It is the opinion of this examiner that the subject told substantially the complete truth concerning the matter of examination.

Respectfully,

Bob Blankenship
Polygraph Examiner

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BEFORE THE SUPREME COURT COMMITTEE ON
PROFESSIONAL CONDUCT

IN RE: WILLIAM WAYNE WATT
Arkansas Bar I.D. No. 78159 CPC Docket No. 2000-016

AFFIDAVIT OF VALENTINE HANSEN

I, VALENTINE HANSEN, state upon oath and affirmation that the following statements are true to the best of my knowledge, information and belief:

I.

I have been engaged in the real estate business for personal investment and as a broker for approximately twenty years and have known Judge Watt for that period of time or longer.

II.

William Watt has represented my interests individually and as business counsel for in excess of fifteen years and I had specific dealings with him Judge Watt from a judicial perspective based on his continuing sponsorship and support of "Hoopfest", a multimillion-dollar, charitable three-on-three basketball tournament which I originated in the City of Little Rock.

III.

Judge Watt has always conducted himself in a professional and credible manner as to our contact from a judicial perspective. His concern for the youth in the community and the expansion of community service programs to combat our gang problem was a specific cause for our drop in juvenile crime and other positive effects on our school drop-out/truancy problem.

IV.

I have reviewed the Complaint as filed by this Committee and, based on my specific and long-term business knowledge from a real-estate brokerage position, his dealings with an appraiser concerning the "Dean Paul Project" do not amount to anything other than the normal activity exhibited by every real estate broker, buyer, or seller of property concerning appraisals in our everyday real estate business. Specifically, on a regular basis, when I commissioned an appraisal for a client, normally the first question from the appraiser has to do with the buyer/seller's expectations as to value. The appraiser seeks that information not to commit an illegal act or to be unethical; he simply needs the knowledge to understand if the client has a realistic expectation or a totally unrealistic idea as to value. On a regular basis, when an appraisal is returned to a buyer, seller, or broker, it is not unusual for the parties to disagree with the valuation and ask the

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appraiser to re-evaluate, seek other comparables, or use other valuation methods in order to adjust the value of the appraisal to seek the expectations of the parties.

This activity by these parties, and based on my reading of the trial transcript and the Complaint, also represents the activities conducted by Judge Watt and it appears that he committed no illegal or unethical act in his conduct in that the ultimate responsibility always is maintained and carried by the licensed appraiser as to the accuracy and authenticity of his valuation.

V.

Since the events of 1985 and 1986, and specifically since his testimony in *United States vs. McDougal, et al.*, I have continued to do business with Judge Watt and have sought his legal advice on a daily basis regardless of unsubstantiated and unsupported allegations as to this particular case.

FURTHER, THE AFFIANT SAYETH NOT.

VALENTINE HANSEN

STATE OF ARKANSAS)
) ss.
COUNTY OF PULASKI)

SUBSCRIBED and SWORN to before me, a Notary Public, on this 9th. day of November, 2000.

[SEAL]

Notary Public

My Commission expires:
4/25/2004

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EXHIBIT "D"

Office of the Independent Counsel

The Redding Building
1701 Center View Drive, Suite 203
Little Rock, Arkansas 72211
(501) 221-8700
Fax (501) 221-8707

April 18, 1998

VIA TELECOPIER

Mr. Mark Hampton
Little Rock, Arkansas

Re: William W. Watt

Dear Mr. Hampton:

Pursuant to our discussion of Friday, April 17, 1998, this is to confirm that the August 1995 Order compelling your client William W. Watt to give testimony and provide other information to the Government, pursuant to 18 U.S.C. 6002 et. sec., is still in effect. As you are aware, this Office sought this Order from Chief Judge Reasoner prior to Mr. Watt's testifying before the federal grand jury in August 1995.

The 18 U.S.C. 6002 Order was in effect at the time Mr. Watt was a Government witness at the trial of U.S. v. McDougal, Tucker, & McDougal, Case No. LR-CR-95-173, before U.S. District Judge George Howard, Jr. His trial testimony commenced on March 27, 1996, and he acknowledged that he had an agreement with the United States concerning the conditions under which he was testifying.

He testified that that agreement had been reached in August 1995 in connection with his grand jury appearance. He testified that he understood that his testimony would not be used against him in any future proceeding, except a possible prosecution for perjury, obstruction of justice, or a false statement. He acknowledged his obligation to tell the truth.

It is the position of this Office that any testimony or information he provides at this time is covered by the 18 U.S.C. 6002 Order. All provisions of that Order remain operative, including his obligation to be truthful.

Very truly yours,

W. Hickman Ewing, Jr.
Deputy Independent Counsel

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EXHIBIT "E"

BEFORE THE SUPREME COURT COMMITTEE ON
PROFESSIONAL CONDUCT

IN RE: WILLIAM WAYNE WATT
Arkansas Bar I.D. No. 78159 CPC Docket No. 2000-016

AFFIDAVIT OF MARY ANN YOUNG

I, MARY ANN YOUNG, state upon oath and affirmation that the following statements are true to the best of my knowledge, information and belief:

I.

I have been acquainted with William Wayne Watt for more than seventeen years and have been employed by him for the majority of that time.

II.

I have maintained a personal contact with the vast majority of all clients represented by him in his legal career and have personally maintained contact with the majority of parties coming into contact with him in his capacity as Little Rock Municipal Judge.

III.

From his date of election through his leaving office, Judge Watt always made a vigilant effort to separate his judicial activities from his personal business and his legal activities, specifically guarded against conflict of interest, and, to my knowledge, no conflict of interest was ever alleged during his tenure, and further, significant restrictions and extra precautions were always taken with regards to his financial activities in order to ensure that no appearance of impropriety occurred while in office.

IV.

It is my belief, and to the best of my knowledge, that a significant contributing factor in his steadfast separation of personal business activities, professional legal representation, and judicial activities was the events that occurred in late 1985 and 1986 concerning David Hale.

V.

In late 1985 and 1986 there were significant business activities initiated with David Hale and, within a very short few months to my own personal knowledge, David Hale was shown as untrustworthy and dishonest in his business activities. It was Mr. Watt's belief that, after some initial transactions had occurred, he had been deceived and, in his words, unreasonably careless in his conduct in dealing with Hale. There are numerous specifics as to Hale's lies and misrepresentations; however, those appear to have been properly exposed in the course of events of the last four to five years.

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VI.

Specifically, Mr. Watt entered into transactions for which I had responsibility of preparing documents at his request, or through his dictation, and my personal knowledge is that within months, Mr. Watt became convinced that Hale was a thief and had duped John C. Rogers and a number of other individuals into entering into transactions for which they had significant liability and possible undisclosed criminal or civil violations.

VII.

In 1988, Mr. Watt dictated documents and caused to be prepared other documentation for the benefit of himself and other parties in an attempt to expose David Hale and in fact, traveled to the Small Business Administration office in Washington, D.C., for that purpose.

VIII.

Mr. Watt continued to attempt to extricate himself and other parties from the transactions involving David Hale. Based on my personal knowledge and memory from that time, Hale had not paid his legal accounts and balances for costs owed to our legal office, and there were no transactions in which Mr. Watt maintained a profitable interest, a potential for profit, or other participation for monetary gain.

IX.

Having reviewed the Complaint as filed by the Committee, I would offer the following facts as to my understanding of the contribution allegation involving Mr. Watt and Governor Frank White. Mr. Watt indicated that a contribution had been solicited by Governor White and, based on his political affiliation and past history, he could not make that contribution. He indicated that funds were available for payment of a bonus to me and that with the appropriate accounting for income purposes, I could make that contribution. I fully understood that my job or future employment did not have relevance to this request, and that I had the option to make a contribution at whatever level I desired without fear of consequence. I previously had been active within the Republican Party and have made contributions through the years to Republican candidates. I made this contribution voluntarily, but Mr. Watt did facilitate the process.

X.

It became clear to Mr. Watt in his dealings with Hale, and specifically as to the referenced contribution process, that he had made errors in judgment and been extremely careless in his conduct. My conversations with him were to the effect that he had misconstrued and totally underestimated his responsibilities as a newly elected judge, but that he knew or should have known that he was significantly restricted in his capabilities from that position.

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XI.

It is my belief that his dealings with Hale and his understanding of the carelessness and lack of examination of Hale's representations contributed to a significant adjustment in his overall conduct from 1987 and 1988 to the present.

XII.

Having been employed by a number of lawyers in my legal career, I have never been exposed to an attorney who was more mindful of his fiduciary responsibilities when dealing with client funds, his ethical responsibility as to conflicts of interest, and specifically, his responsibilities as to separation of judicial, legal, and personal business activities since that time involving Hale.

XIII.

It is my belief, and to the best of my knowledge, that he has conducted his activities in an honest manner and, based on my personal knowledge of our documentation supplied during the last five years to various investigatory bodies and the return of that information documented as correct, that all of his financial dealings have been well above-board and absolutely correct.

FURTHER, THE AFFIANT SAYETH NOT.

Mary Ann Young
MARY ANN YOUNG

STATE OF ARKANSAS)
) ss.
COUNTY OF PULASKI)

SUBSCRIBED and SWORN to before me, a Notary Public, on this 9 day of November, 2000.

Notary Public

[SEAL]

My Commission Expires:

DEANNA MALIS
NOTARY PUBLIC, ARKANSAS
JEFFERSON COUNTY
My Comm. Expires July 14, 2004

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EXHIBIT "F"

BEFORE THE SUPREME COURT COMMITTEE ON
PROFESSIONAL CONDUCT

IN RE: WILLIAM WAYNE WATT
Arkansas Bar I.D. No. 78159 CPC Docket No. 2000-016

AFFIDAVIT OF JOHN COLLINS ROGERS

I, JOHN COLLINS ROGERS, state upon oath and affirmation that the following statements are true to the best of my knowledge, information and belief:

I.

I have been personally acquainted with William Watt since 1978, and have conducted personal and business activities continuously with him since that time to the present.

II.

In late 1985 and specifically, in 1986, David Hale contacted me discuss entering into a corporate business relationship with him.

III.

After due consideration, and based on Hale's standing within the community as to his business activities and status as a municipal judge, I entered into business relationships with him.

IV.

I was aware that Watt also had represented Hale on a legal basis for some period of time and on a limited basis. Watt indicated at the time that I should pay attention closely to my business activities; however, it appeared that there was no reason to not enter into a business relationship with Hale at that time.

V.

Subsequent to my dealings with Hale, by the end of 1986 and 1987, it became clear that Hale was less than truthful in the majority of his business representations.

VI.

During 1987, I became personally aware of serious conflicts between Watt and Hale, based on Watt's belief that Hale was misrepresenting facts not only to him but also to me in the business transactions. Further, Watt specifically stated that he believed Hale

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was in fact stealing money and that while he had no specific proof, circumstances pointed definitely in that direction.

VII.

By early 1988, Watt was convinced and I was convinced that David Hale had lied and misrepresented facts from the very beginning of our transactions in 1986, and that there was a significant and serious need to obtain files, documents, and other information in order to determine any liability or problems that could occur as a result of the dealings with Hale.

VIII.

I was aware that in early 1988, Watt had already had confrontations with Hale, and that specifically, Standard Abstract and Title Company was instructed to withhold closing on real estate transactions for the benefit of Hale, for which Watt was specifically needed as a Trustee or participant up to and until documentation, releases, and indemnification documents were obtained from Hale. These documents were refused by Hale and no real estate closings occurred.

IX.

Discussions continued with Watt as to some of Hale's activities over the next few months and finally in mid-1988, Watt informed me that he would take matters into his own hands and seek documentation from the Small Business Administration in Washington, D.C., and supply them with sufficient information as to Hale's activities so as to clear up any problems originating from 1986.

X.

I was interviewed by the Independent Counsel Attorneys and made full disclosure to them regarding any inquiry they made of me as to facts that I had specific and personal knowledge of concerning these activities. I also was interviewed by special agents of the Federal Bureau of Investigation and made the same disclosures.

XI.

Since 1985 and 1986, I have maintained a continuous and frequent personal and legal relationship with Judge Watt and continued to do so as of the date of this Affidavit. I have absolutely no reason to doubt his trustworthiness and credibility as to the conduct of his personal, business, or professional legal activities.

XII.

In the conduct of his judicial activities while Municipal Judge for the City of Little Rock from 1986 through 1996, he maintained a vigilant effort to avoid conflict of

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interest, and was ever-mindful of his public position when conducting our real estate and other business activities.

FURTHER, THE AFFIANT SAYETH NOT.

JOHN COLLINS ROGERS

STATE OF ARKANSAS)
) ss.
COUNTY OF PULASKI)

SUBSCRIBED and SWORN to before me, a Notary Public, on this ____ day of November, 2000.

Notary Public

[SEAL]

My Commission expires:

DEANNA MAUS
NOTARY PUBLIC, ARKANSAS
JEFFERSON COUNTY
My Comm. Expires July 14, 2004

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EXHIBIT "G"

Office of the Independent Counsel

Two Financial Centre
10825 Financial Centre Parkway, Suite 134
Little Rock, Arkansas 72211
(501) 221-8700
Fax (501) 221-8707

March 24, 1996

Jenniffer Morris Horan, Esq.
Bobby McDaniel, Esq.
600 West Capitol, Room 108
Little Rock, AR 72201

Sam Heuer, Esq.
425 W. Capitol Street, Suite 3750
Little Rock, AR 72201

George Collins, Esq.
James Lessmeister, Esq.
400 W. Capitol Ave.
Suite 2348
Little Rock, AR 72201

Re: United States v. James B. McDougal, et al., LR-CR-95-173

Dear Counsel:

Judge Watt's attorney, Mark Hampton, has informed us that Mr. Watt was polygraphed. They have not provided us with the results.

Very truly yours,

KENNETH W. STARR
INDEPENDENT COUNSEL

By: Amy J. St. Eve
Associate Counsel

cc: Mark Hampton, Esq.

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EXHIBIT "H"

LAW OFFICES OF
WILLIAM W WATT

1819 N FILLMORE
LITTLE ROCK ARKANSAS 72207
PHONE 664-4004

February 17, 1988

Mr. Guy Maris III
Vice-President
Standard Abstract & Title Company
3420 Old Cantrell Road
Little Rock, Arkansas 72202

Re: Proposed sale of property by
Foxx Enterprises, Inc.

Dear Mr. Maris:

Pursuant to our conversation concerning the proposed sale and transfer of assets from Foxx Enterprises, Inc., on behalf of Mr. David L. Hale, I am herewith enclosing the following:

1. A resolution by the Board of Directors of a Special Meeting authorizing me to execute any transfer documents necessary to secure the removal of the property from Foxx Enterprises, Inc., to the proposed purchaser.

2. A Release Agreement and Indemnification Agreement concerning the various parties involved with this transaction to be executed by David L. Hale as President of Capital-Management Services, Inc.

3. Further, to clean up the last remaining loan transaction concerning property acquisitions by various corporations a Release and Indemnification Agreement for the Richard M. Grasby, P.A.

Your specific instructions are as follows:

(1) You have prepared and submitted to me a Release Deed to be executed by John C. Rogers and Company, releasing the property held as subject of a mortgage given by Foxx Enterprises, Inc., said property being subsequently transferred from Foxx Enterprises, Inc., at the direction of David L. Hale. You are to hold this Deed in escrow and said Deed shall not be released until both sets of Release Agreements and Indemnification

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Re: Proposed sale of property
by Foxx Enterprises, Inc.

Agreements on behalf of the parties named in both Agreements have been executed and are in your possession.

(2) Once you have received executed copies of both sets of Release and Indemnification Agreements, you are authorized to release the Release Deed from your escrow holding and for that Deed to be applied as needed in allowing Foxx Enterprises, Inc., to transfer the property.

Under no circumstances shall this Release Deed be recorded or otherwise used to facilitate a sales transaction on the part of Foxx Enterprises, Inc., without the first execution of all release agreements and indemnification agreements on behalf of the parties so named.

If there is a question as to the specificity of these instructions, please contact me prior to your need for closing. I await your call to pick up the Release Deed to be executed by John C. Rogers and Company on behalf of Foxx Enterprises, Inc.

I look forward to hearing from you.

Sincerely,

William W. Watt

WWW/may
Enclosures

2-18-88
Acknowledged and Received
Standard Abstract & Title Co.
By Guy Maris III, Vice President

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EXHIBIT "I"

ARKANSAS
REAL ESTATE COMMISSION

612 South Summit Street
Little Rock, AR 72201-4740
Phone: (501) 683-8010
FAX: (501) 683-8020

E-mail: Administration: arec@mail.state.ar.us
Investigations: arecinv@mail.state.ar.us
Licensing: areclic@mail.state.ar.us

COMMISSIONERS
John A. Bennett, Chairman
Mary Bassett, Vice Chair
Tom D. Baxley
Ina Martin
Virgil L. Miller, Jr.
EXECUTIVE DIRECTOR
Bill J. Williamson

CERTIFICATION OF LICENSURE

To: Whom It May Concern **Date:** February 17, 2000

This is to certify that a good faith search of our records reveals the following information:

- ☐ Solo Proprietorship
- ☐ Partnership
- ☐ Corporation
- ☐ Individual
- ☐ Arkansas does not License Companies or Corporations

GENERAL

Name: William Watt
(Last name/address registered with this office)

Business Name: William W. Watt and Companies

Address of Record: 1819 N. Fillmore
Little Rock, AR 72207

LICENSE HISTORY

Type License	License Number			Firm
Broker	8841	10-21-1983 (from)	Present (to)	William W. Watt and Companies
		(from)	(to)	
		(from)	(to)	

Score Required to Pass National Section: 70

Licensed By:
- ☒ Written Examination — **Exam Source:** ASI
- ☐ Reciprocity — **Sales Date:**
- ☐ Other _____ — **Broker:** 07-23-1983

Current License Expires On: 12-31-2000 **License Expired On:**

- ☐ No Record of Licensure in this State or Province
- ☐ Other (See "Remarks")

DISCIPLINARY ASCTIONS

- ☒ No Record of Disciplinary Actions Taken
- ☐ Other (See "Remarks")

REMARKS

By: Bill J. Williamson
Bill J. Williamson
Executive Director

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LAW OFFICES OF

WILLIAM W. WATT

ATTORNEY AND COUNSELOR AT LAW

1619 N. FILLMORE

LITTLE ROCK, ARKANSAS 72207

PHONE 664-4004

July 6, 1988

Mr. Robert G. Lineberry
Deputy Assistant Administrator
for Investments
Small Business Administration
Imperial Building
1441 L St. NW
Washington, D.C. 20416

Re: David Hale Investments

Dear Mr. Lineberry:

By way of introduction, I am an attorney in Little Rock, Arkansas. I have been involved with David Hale in a number of business and corporate transactions.

The purpose of this letter is to determine the proper type of action, if any, that should be taken concerning an investment by Mr. Hale's company, Capital Management Services, Inc. into an Arkansas corporation named Sunbelt Group, Inc. Mr. Hale loaned this company funds for an aquisition, and a short time later this transaction was postponed, causing the funds to be returned to Mr. Hale. This all happened in mid 1986 and my problem is that we cannot locate a paid note for the return of the funds.

I have concerns about your agency being interested in the transaction because of my recent reading of the loan contract and because Mr. Hale will not return paperwork to Mr. Rogers, who is the President of Sunbelt Group, Inc. Mr. Hale took the loan funds back for another transaction and Mr. Rogers has not heard from anyone with your agency, so I would assume the transaction is fine; however, if you feel it appropriate, please forward this letter through channels to determine if I have discovered a significant problem.

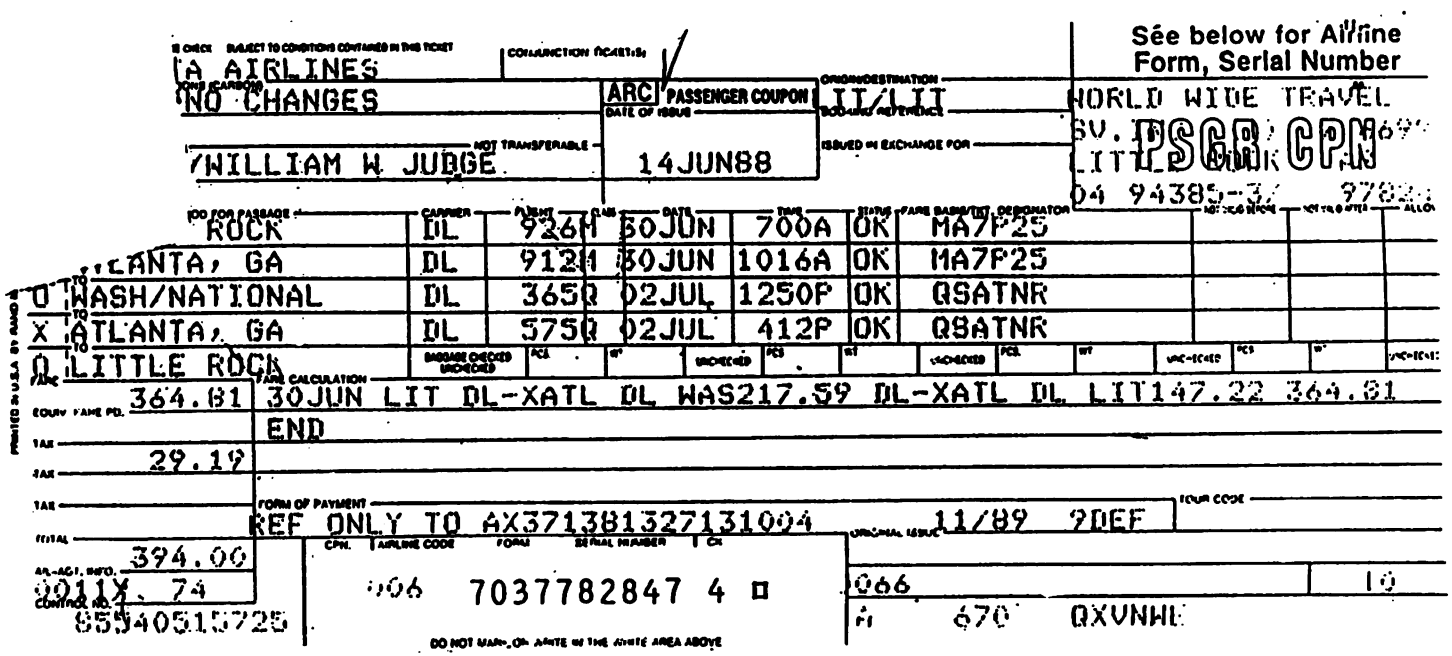
I was in Washington last week and made an effort to see you; however, your office indicated that your schedule would not permit a visit. If this is a problem, I will be happy to arrange a trip to visit you in your office.

Sincerely yours,

William W. Watt

WWW/may

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II/1 II
HORLD WIDE TRAVEL
/WILLIAM W JUDGE
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WASH/NATIONAL DL 365Q 02JUL 1250P OK QSATNR
ATLANTA, GA DL 575Q 02JUL 412P OK Q8ATNR
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NOTE: It is not necessary to purchase a new ticket when your plans change enroute. Apply the value of this ticket toward a reissued one.

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TO: CITY OF L.R TRAFFIC COURT
ANDERSON/ELLEN (I95)
600 WEST MARKHAM
LITTLE ROCK AR 72201

FOR: WATT/WILLIAM W JUDGE
L.R.TRAFFIC COURT
600 WEST MARKHAM
LITTLE ROCK, AR 72201

PLEASE PAY BY INVOICE. Payment is due within 7 days. Late payment will be subject to service charge.

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	AR ATLANTA, GA	922A				
30JUN THU	LV ATLANTA, GA	1016A	DELTA AIRLINES	912M		
	AR WASH/NATIONAL	1200N				
30JUN THU	HOTEL - INDEPENDENT		MADISON HOTEL 15TH AND M STREETS WASHINGTON DC 20005 202-862-1600 1 ROOM - 2-NIGHTS- A1K RATE 180.00 CONF-61388JAN			
02JUL SAT	LV WASH/NATIONAL	1250P	DELTA AIRLINES	365Q		LUNCH
	AR ATLANTA, GA	234P				
02JUL SAT	LV ATLANTA, GA	412P	DELTA AIRLINES	575Q		
	AR LITTLE ROCK	440P				

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WATT/WILLIAM W JUDGE	TKT # 0067037782847	$ 394.0
AMERICAN EXPRES #371381327131004	EXP 11/89	$ 394.0
	TOTAL	$ 0.0

NSA FOR JUDGE WAIT WITH JULIA WATT
DEL 14 JUN

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DIRECT RESERVATIONS (202) 862-1740
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THE MADISON℠

WASHINGTON'S CORRECT ADDRESS
FIFTEENTH & M STREETS, NORTHWEST • WASHINGTON, D.C. 20005
Marshall B. Coyne, *Chairman of the Board*

WATT, WILLIAM JUDGE

1819 N. FILLMORE
LITTLE ROCK, ARKANSAS
72207

ARRIVAL	6/30/88
DEPARTURE	7/02/88
NO. IN PARTY	1
RATE	180.00

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CHECK-OUT CLERK TIME :00

FL. NO. 425393 ROOM NO. 1029

#	DATE	DESCRIPTION	AMOUNT
1	6/30/88	L/D PHONE CALLS/1029/6300606003/1/4 15:37/5095360203	$2.97
2	6/30/88	LOCAL PHONE CALLS/1029/6300657002/1/4 16:12/8331063	$.75
3	6/30/88	ROOM/1029/114817/1/4	$180.00
4	6/30/88	ROOM TAX/1029/114818/1/4	$18.00
5	6/30/88	OCCUPANCY TAX/1029/114819/1/4	$1.00
6	7/01/88	ROOM/1029/115878/1/4	$180.00
7	7/01/88	ROOM TAX/1029/115879/1/4	$18.00
8	7/01/88	OCCUPANCY TAX/1029/115880/1/4	$1.00
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